

MONTANA LEGISLATIVE HISTORY

Chapter 111 1999

Bill H 118 S _____

Original bill & history ☒ c

H. Committee on State Admin

Hearing Date(s) 1/15 _____ c

ex 2/03 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on State Admin

Hearing Date(s) 2/15 _____ c

ex 2/15 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

1/12	Hearing		
1/15	Committee Executive Action--Bill Passed as Amended	18	2
1/16	Committee Report--Bill Passed as Amended		
1/23	2nd Reading Passed as Amended	85	15
1/26	3rd Reading Passed	84	15
	Transmitted to Senate		
1/27	Referred to Judiciary		
3/03	Hearing		
3/04	Committee Executive Action--Bill Concurred as Amended	7	0
3/04	Committee Report--Bill Concurred as Amended		
3/05	2nd Reading Concurred	50	0
3/06	3rd Reading Concurred	47	1
	Returned to House with Amendments		
4/09	2nd Reading Senate Amendments Concurred	84	11
4/10	3rd Reading Passed as Amended by Senate	87	10
4/10	Sent to Enrolling		
4/12	Returned from Enrolling		
4/13	Signed by Speaker		
4/14	Signed by President		
4/15	Transmitted to Governor		
4/21	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 391		
	Effective Date: 10/01/1999 - All Sections		

HB 117 Introduced by Ohs

LC0012 Drafter: Higgins

Statutorily Authorize the Montana Consensus Council;...

12/21	Introduced
1/04	1st Reading
1/04	Referred to State Administration
1/04	Fiscal Note Requested
1/06	Fiscal Note Received
1/07	Fiscal Note Signed
1/07	Fiscal Note Printed
1/19	Hearing
2/04	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

HB 118 Introduced by Mood

LC0113 Drafter: Niss

Revise Statutes Governing the Teachers' Retirement System to Comply with the Requirements of the Internal Revenue Code for a Qualified Governmental Retirement Plan;...

By Request of Teachers' Retirement Board

12/21	Introduced
1/04	1st Reading
1/04	Referred to State Administration
1/04	Fiscal Note Requested
1/08	Fiscal Note Received
1/08	Fiscal Note Signed
1/08	Fiscal Note Printed
1/15	Hearing

HOUSE BILLS AND RESOLUTIONS

373

2/04	Committee Executive Action--Bill Passed as Amended	17	0
2/05	Committee Report--Bill Passed as Amended		
2/08	2nd Reading Passed	87	10
2/09	3rd Reading Passed	93	6
	Transmitted to Senate		
2/10	Referred to State Administration		
2/15	Hearing		
2/16	Committee Executive Action--Bill Concurred	5	0
2/16	Committee Report--Bill Concurred		
3/13	2nd Reading Concurred	47	0
3/15	3rd Reading Concurred	49	0
	Returned to House		
3/16	Sent to Enrolling		
3/16	Returned from Enrolling		
3/17	Signed by Speaker		
3/17	Signed by President		
3/18	Transmitted to Governor		
3/19	Signed by Governor		
3/23	Chapter Number Assigned		
	Chapter Number 111		
	Effective Date: 7/01/1999 - Sections 1-3, 4(1-4,6,7), 5-18 and 20-29		
	Effective Date: Effective on the Later of July 1, 1999, or the Date		
	That the IRS Determines in a Private Letter Ruling That the		
	Creation and Use of the Excess Benefit Arrangement Provided in		
	Those Sections Comply with the Requirements of the IRS Code		
	Regarding a Qualified Retirement Plan - Sections 4(5) and 19		

HB 119 Introduced by Mood

LC0111 Drafter: Niss

Relate to Public Retirement Systems;...

By Request of Public Employees' Retirement Board

12/21	Introduced		
1/04	1st Reading		
1/04	Referred to State Administration		
1/04	Fiscal Note Requested		
1/11	Fiscal Note Received		
1/11	Fiscal Note Signed		
1/12	Fiscal Note Printed		
1/15	Hearing		
2/04	Committee Executive Action--Bill Passed as Amended	17	0
2/05	Committee Report--Bill Passed as Amended		
2/08	2nd Reading Passed	99	0
2/09	3rd Reading Passed	95	3
	Transmitted to Senate		
2/10	Referred to State Administration		
2/15	Hearing		
2/16	Committee Executive Action--Bill Concurred	5	0
2/16	Committee Report--Bill Concurred		
3/02	2nd Reading Concurred	48	0
3/03	3rd Reading Concurred	50	0
	Returned to House		
3/03	Sent to Enrolling		

HOUSE BILL NO. 118

INTRODUCED BY MOOD D

BY REQUEST OF THE TEACHERS' RETIREMENT BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATUTES GOVERNING THE TEACHERS' RETIREMENT SYSTEM TO COMPLY WITH THE REQUIREMENTS OF THE INTERNAL REVENUE CODE FOR A QUALIFIED GOVERNMENTAL RETIREMENT PLAN; CLARIFYING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO COMPLY WITH THE INTERNAL REVENUE CODE; CLARIFYING THE MEMBERSHIP RIGHTS OF LEGISLATORS WHO ARE ALSO MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; GRANTING EMPLOYERS PARTICIPATING IN THE TEACHERS' RETIREMENT SYSTEM THE OPTION OF WITHHOLDING EMPLOYEE CONTRIBUTIONS UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE FOR THE PURPOSE OF PURCHASING SERVICE; PERMITTING CONTRIBUTIONS WITHHELD ON TERMINATION PAY AND REPORTED TO THE TEACHERS' RETIREMENT SYSTEM TO BE WITHHELD UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE; CLARIFYING ELIGIBILITY PROVISIONS; CLARIFYING DUTIES OF THE TEACHERS' RETIREMENT BOARD REPRESENTATIVE; AMENDING SECTIONS 5-2-304, 19-20-101, 19-20-106, 19-20-302, 19-20-404, 19-20-405, 19-20-414, 19-20-502, 19-20-602, 19-20-603, 19-20-702, 19-20-703, 19-20-710, 19-20-716, 19-20-801, 19-20-802, 19-20-804, 19-20-901, AND 19-20-902, MCA; REPEALING SECTIONS 19-20-412, 19-20-704, 19-20-707, 19-20-708, AND 19-20-709, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 5-2-304, MCA, is amended to read:

"5-2-304. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who

1 is ~~otherwise eligible to participate as a member or contributor~~ of a public retirement system governed by
2 state law may but is not required to continue ~~his~~ the person's participation in ~~such that~~ public retirement
3 system while engaged in ~~his~~ official duties as a legislator. A legislator shall make an irrevocable election
4 within 180 days of taking office whether to continue participation in the public retirement system.
5 person who is a member of the Montana legislature on July 1, 1999, has until January 1, 2000, to file
6 a written application with the public employees' retirement board that is the irrevocable election required
7 by this section.

8 (3) A legislator who elects to continue participation as provided in subsection (2) shall:
9 ~~(a) continue his~~ the payments into the fund of the retirement system at the rate currently in effect
10 in ~~such the~~ system based on ~~his the legislator's~~ monthly salary as a member of that system; ~~or~~
11 ~~(b) continue his payments into the fund of the retirement system at the rate currently in effect~~
12 ~~in such system based on his monthly salary as a legislator.~~

13 (4) The state contribution ~~shall~~ must be made by legislative appropriation. It ~~shall~~ must equal the
14 appropriate employer contribution at the rate currently in effect in the system."

15
16 Section 2. Section 19-20-101, MCA, is amended to read:

17 "19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise,
18 the following definitions apply:

19 (1) "Accumulated contributions" means the sum of all the amounts deducted from the
20 compensation of a member or paid by a member and credited to the member's individual account in the
21 annuity savings fund, together with interest. Regular interest must be computed and allowed to provide
22 a benefit at the time of retirement.

23 (2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest
24 on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate
25 of 8% compounded annually.

26 (3) "Average final compensation" means the average of a member's earned compensation during
27 the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average
28 and on which contributions have been made as required by 19-20-602 ~~or 19-20-413~~. If amounts defined
29 in subsection (6)(b) have been converted by an employer to earned compensation for all members and
30 have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years

preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under ~~19-20-716(2)~~ 19-20-716(1)(b).

(4) "Beneficiary" means a person formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for professional membership dues; maintenance; housing; day care; or automobile, travel, lodging, or entertaining expenses; or any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) Earned Except as provided in 19-20-716, earned compensation does not include lump-sum payments in respect to unused, accumulated sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive or severance payment contingent upon the employee terminating employment.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(10)~~(11) "Part-time service" means service that is less than full-time or that totals less than 9 months in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(11)~~(12) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

~~(12)~~(13) "Regular interest" means interest at 4% a year compounded annually or at a rate as may be set by the retirement board in accordance with 19-20-501(2).

(14) "Retired member" means a person who has terminated employment that is eligible for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(13)~~(15) "Retirement allowance" means a payment due monthly to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

~~(14)~~(16) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(15)~~(17) "Retirement system" or, "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(16)~~(18) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(17)~~(19) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the

member.

~~(18)(20)~~ "Termination pay" means any form of termination pay made at the time of retirement or death; payments contingent on the employee terminating employment; any lump-sum payment for ~~deferred compensation~~; sick leave; or accumulated vacation credit; or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

~~(19)(21)~~ "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(22) "Written application" means a written instrument, specified by the board, signed by the member, and filed with the board that contains all the information required by the board, including documentation as the board considers necessary."

Section 3. Section 19-20-106, MCA, is amended to read:

"19-20-106. Retaining qualified plan status -- board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as specified in the Internal Revenue Code. If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public retirement systems or with the plan's status as a qualified governmental plan under section 414(h) of the Internal Revenue Code and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform to the federal qualification requirements and allow the ~~system plan~~ to retain tax-deferred status. The board may adopt rules to implement this section.

(2) For the purpose of section 401(a) of the Internal Revenue Code, the plan document for each retirement plan is composed of the applicable provisions of the Montana constitution, this chapter, and applicable rules adopted by the board."

NEW SECTION. Section 4. General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. The board shall adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement. The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement. The benefit arrangement must be a separate part of the system. The benefit arrangement is subject to the following requirements:

(a) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(b) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30.

Section 5. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who

became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech-language pathologist, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher:

(i) ~~may elect~~ shall make an irrevocable election whether to become an active member of the retirement system on the first day of employment ~~in any fiscal year~~; or

(ii) is required to become an active member of the retirement system on the 31st day of employment in any fiscal year if the substitute teacher has not elected membership under subsection (4)(a)(i).

(b) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall make an irrevocable election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(c) The employer shall give written notification to a substitute teacher on the first day of employment ~~in any fiscal year~~ of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher declines to elect membership during the election period, the teacher shall execute a written statement waiving membership and the employer shall retain the statement.

~~(5) A substitute teacher who did not elect membership under subsection (4)(a)(i) and who subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:~~

~~—— (a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus~~

~~—— (b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.~~

~~—— (6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike."~~

Section 6. Section 19-20-404, MCA, is amended to read:

"19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1)

A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard during the Korean conflict between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed written application form and proper certification of the member's military service.

(2) ~~(a)~~ If a member is ineligible for service credit under subsection (1), the member may apply

under the provisions of this subsection ~~(a)~~ for creditable service in the retirement system; ~~except as provided in subsection (2)(b);~~ for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

~~(b) If a member elects to purchase additional service under 19-20-412, service purchased under this subsection (2) may be used only for the purpose of calculating the member's retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-20-801 or 19-20-802.~~

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 7. Section 19-20-405, MCA, is amended to read:

"19-20-405. Limit on creditable service that may be awarded. The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, and 19-20-410(1), ~~and 19-20-412~~ may not exceed 5 years."

Section 8. Section 19-20-414, MCA, is amended to read:

"19-20-414. Rollover or transfer of public employee accumulated contributions. (1) A member who is eligible to qualify service under this chapter may at any time before retirement apply to roll over or transfer the member's accumulated contributions on deposit with any other qualified eligible retirement plan. The total amount transferred to the retirement system may not exceed the amount due to purchase service.

1 (2) If, in the case of a transfer, the transferred the account includes both tax-deferred and tax
2 contributions amounts, the transferring agency shall identify the member's tax-deferred and tax
3 contribution and interest balances amounts at the time the transfer is made.

4 (3) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited
5 by subsection (1), the board shall accept a direct rollover of eligible distributions from another eligible
6 retirement plan."

7
8 **NEW SECTION.** Section 9. Procedure for purchase of service credit and pick up. (1) A member
9 who wishes to redeposit pursuant to 19-20-602(2) amounts previously withdrawn or who is eligible
10 purchase service credit pursuant to this part shall make the following series of elections to accomplish
11 the redeposit or purchase:

12 (a) The member may elect a lump-sum payment, a series of installment payments, or
13 combination of lump-sum payments and installment payments.

14 (b) If a series of installment payments are elected by the member, the member may elect to pay
15 the installments directly to the board or to have the installments paid by payroll deduction or the member
16 may select a combination of both.

17 (c) With respect to installments payable by payroll deduction, if the member's employer has
18 adopted the resolution described in subsection (2), the member shall elect the irrevocable payroll
19 deduction authorization provided in subsection (4). If the member's employer has not adopted
20 resolution, the member may elect only a revocable payroll deduction authorization.

21 (2) An employer may adopt a resolution to pick up and pay the member's elective contributions
22 made pursuant to a binding, irrevocable payroll deduction authorization. The contributions picked up
23 the employer must be payable from the same source as is used to pay compensation to the member.
24 resolution must contain the following statements:

25 (a) that the member contributions, even though designated as member contributions for state
26 purposes, are being paid by the employer in lieu of the contributions by the member; and

27 (b) that the member may not choose to receive the contributed amounts directly instead of having
28 them paid by the employer to the system.

29 (3) (a) With respect to any member's elective contributions, the effective date of the employer
30 pick up is the later of:

- (i) the adoption of the employer's resolution; or
- (ii) the execution of the irrevocable payroll deduction authorization form.

(b) The pick up does not apply to a contribution made before the effective date of the employer's resolution. An irrevocable payroll deduction authorization in effect on the effective date of the employer's resolution is void and the provisions of subsection (1) apply.

(4) If the irrevocable payroll deduction authorization is elected by the member, it must be executed by the member and the member's employer. Subject to any maximum amounts or duration established by state or federal law, the irrevocable payroll deduction authorization must specify:

- (a) the amount of the deduction;
- (b) the number of installments;
- (c) the number of years and type of service by the member; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the irrevocable payroll deduction authorization is 3 months, and the maximum duration is 5 years. The minimum number of years specified to be purchased may not be less than 1 year or the total number of years that the member is eligible to purchase. The maximum may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable payroll deduction authorization may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may make more than one binding, irrevocable payroll deduction authorization so long as a subsequent deduction authorization does not amend a previous binding, irrevocable payroll deduction authorization. A member may not prepay any amounts under a binding, irrevocable payroll deduction authorization.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable payroll deduction authorization expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

1
2 **NEW SECTION.** Section 10. Credit for legislative service required. (1) A legislator who did not
3 elect to continue to participate in the system, as provided under 5-2-304, and who subsequently
4 participates as a member must be awarded creditable service for legislative service if the legislator
5 contributes:

6 (a) an amount equal to the member contributions that would have been made if the legislator had
7 elected membership; and

8 (b) interest at the rate that the contributions would have earned if they had been on deposit with
9 the retirement system.

10 (2) The employer contribution must be made by the legislative branch in the amount that would
11 have been contributed if the legislator had elected membership plus interest at the rate that the
12 contributions would have earned if they had been on deposit with the retirement system.

13
14 **NEW SECTION.** Section 11. Credit for substitute teaching service required. A substitute teacher
15 who did not elect membership under 19-20-302 and who subsequently becomes a member must be
16 awarded creditable service for substitute teaching service if the substitute teacher contributes:

17 (1) an amount equal to the combined member and employer contributions that would have been
18 made if the substitute teacher had elected membership; and

19 (2) interest at the rate that the contributions would have earned if they had been on deposit with
20 the retirement system.

21
22 **Section 12.** Section 19-20-502, MCA, is amended to read:

23 "**19-20-502. Restrictions on use of moneys money.** (1) ~~No A~~ member of the retirement board
24 ~~any of its employees or an employee of the board~~ may not:

25 (a) have an interest, direct or indirect, in the gains or profits of any investment of ~~moneys money~~
26 of the retirement system, except as ~~herein~~ provided in this section;

27 (b) directly or indirectly, for ~~himself~~ the member or employee or as an agent, in any manner use
28 the ~~moneys money~~ or deposits of the retirement system except to make ~~such~~ current and necessary
29 expenditures ~~as are~~ authorized by the retirement board; or

30 (c) become an endorser or surety or in any manner an obligor for ~~moneys money~~ loaned by or

borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

Section 13. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings fund -- member's contribution. (1) The annuity savings fund is a fund in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.044% of the member's earned compensation. Contributions to and payments from the annuity savings fund must be made in the following manner:

~~(1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall:~~

(i) shall pick up and pay the contributions that would be payable by the member under this section subsection (1) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to [section 9].

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(2) In addition to the normal contributions, and subject to the approval of the retirement board and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with [section 9].

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund.

Section 14. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal of accumulated contributions -- options. An inactive member elects to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings fund in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) ~~A person whose membership terminates under the provisions of 19-20-304(4) may withdraw~~

~~the person's accumulated contributions.~~

(4) Upon written ~~request~~ application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for making the written ~~request~~ application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 15. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A--the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime

1 of the member's designated beneficiary.

2 (c) Option C--the optional allowance will be paid to the member throughout the member's lifetime,
3 and upon the member's death, two-thirds of the optional allowance will be continued throughout the
4 lifetime of the member's designated beneficiary.

5 (d) Period certain and life--a retirement allowance will be paid for a certain period of time or for
6 the member's lifetime, whichever is greater.

7 (i) The member shall elect one of the following certain time periods:

8 (A) 10 years if the member is 75 years of age or younger at the time of retirement; or

9 (B) 20 years if the member is 65 years of age or younger at the time of retirement.

10 (ii) At the time of retirement, the member shall file with the board a written nomination of
11 beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless
12 limited by a family law order, the nominated beneficiary may be changed by the member at any time by
13 filing with the board a written notice designating different beneficiaries.

14 (3) (a) Upon written ~~request~~ application to the retirement board, a retired member whose effective
15 date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may
16 designate a different beneficiary, select a different option, or convert the member's optional retirement
17 allowance to a ~~regular retirement or disability allowance~~ normal form of retirement allowance if:

18 (i) the original beneficiary has died; ~~or. The benefit must revert to the full normal form of~~
19 retirement allowance effective the first of the month following the death of the designated beneficiary.

20 (ii) the member has been divorced from the original beneficiary and the original beneficiary has not
21 been granted the right to receive the optional retirement allowance as part of the divorce settlement. ~~The~~
22 benefit must revert to the full normal form of retirement allowance effective the first of the month
23 following receipt of a written application and verification that the original beneficiary has not been granted
24 the right to receive the optional retirement allowance as part of the divorce settlement.

25 (b) Upon receipt of the ~~request~~ written application, the board shall actuarially adjust the member's
26 monthly retirement or disability allowance to reflect the change.

27 (4) ~~Effective on the first of the month following the death of a person nominated as the~~
28 ~~designated beneficiary under subsection (2)(a), (2)(b), or (2)(c), any~~ A retired member relying upon the
29 optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October
30 1, 1993, will revert may file a written application to convert the optional retirement allowance to the full

normal form of retirement allowance available at the time of retirement if:

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(5) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(6) The retired member may, within 18 months of the death of the designated beneficiary, shall file a the written application required by subsection (3) or (4) with the board to designate a different beneficiary and or to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary. The optional allowance is effective on the first day of the month following receipt of the retiree's application."

Section 16. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

1 (4) The life expectancy of a member or the member's beneficiary may not be recalculated after
2 benefits commence."

3
4 Section 17. Section 19-20-710, MCA, is amended to read:

5 "19-20-710. Maximum benefit limitation. ~~No~~ A monthly benefit paid under the retirement system
6 provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of
7 the Internal Revenue Code of 1986 ~~and adjusted annually by the commissioner of internal revenue for~~
8 calendar years 1988 and thereafter. However, benefits in excess of those limits may be paid from an
9 excess benefit arrangement subject to [section 19]."

10
11 Section 18. Section 19-20-716, MCA, is amended to read:

12 "19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the
13 time of termination and elects to retire at that the time of retirement, the member shall select, subject
14 to subsection (3) and by executing a binding, irrevocable written election at least 90 days before the
15 member's termination date, one of the following options:

16 ~~{1}~~(a) Option 1--The member may use the total termination pay in the calculation of the member's
17 average final compensation. The member and the employer shall pay contributions to the retirement
18 system as determined by the board to adequately compensate the system for the additional retirement
19 benefit. The contributions must be made at the time of termination.

20 ~~{2}~~(b) Option 2--The member may use a yearly amount of the total termination pay added to each
21 of the 3 consecutive years' salary used in the calculation of the member's average final compensation.
22 To determine the amount of termination pay used in the calculation of average final compensation,
23 termination pay must be divided by the total number of years of creditable service to determine a yearly
24 amount. The member and the employer shall pay contributions on the termination pay according to the
25 rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of
26 termination.

27 ~~{3}~~(c) Option 3--The member may exclude the termination pay from the average final
28 compensation. A contribution is not required of either the member or the employer, ~~and any contribution~~
29 ~~made under 19-20-602 and 19-20-605 must be refunded.~~

30 (2) A binding, irrevocable election required by this section must be executed by both the member

and the employer and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pick up is the date of execution of the binding, irrevocable election by both the member and employer. The pick up does not apply to a contribution made before the effective date of the pick up.

(3) If a member fails to make the written election within the time period required in subsection (1) or if the member contribution is greater than the total amount of termination pay, the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) all or any part of the termination pay received. A contribution made pursuant to this subsection cannot be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

NEW SECTION. **Section 19. Maximum contribution limitation.** (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system if the amount of the contribution would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) If the system's law requires a lump-sum payment for purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of sections 125, 403(b), or 457 of the Internal Revenue Code.

Section 20. Section 19-20-801, MCA, is amended to read:

"19-20-801. Eligibility for service retirement. A member who has at least 5 full years of creditable service, ~~whose last 5 years of creditable service were in this state,~~ and who has attained the age of 60 or has been credited with full-time or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application ~~setting forth the fact of the member's retirement.~~"

Section 21. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service, ~~whose last 5 years of creditable service were in this state,~~ and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if ~~he~~ the member files with the retirement board ~~his~~ the member's written application ~~setting forth the fact of his retirement.~~

(2) The early retirement allowance ~~shall~~ must be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which ~~he~~ the member would have retired had ~~he~~ the member attained 60 years of age or had ~~he~~ the member completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he the member would have retired had he the member attained 60 years of age or had he the member completed 25 years of creditable service."

Section 22. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. (1) Upon termination, an eligible member must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service; and service transferred under 19-20-409, ~~and additional service purchased under 19-20-412.~~

(2) Except as provided in subsection ~~(3)~~ (4), a retired member may be employed ~~as a part-time or substitute teacher in Montana~~ part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) (a) Except as provided in subsection (4), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (3)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated

1 at the time of the member's previous retirement plus any service credit accumulated subsequent to
2 reemployment.

3 (4) If an early-retired member under 19-20-802 is reemployed with the same employer within 30
4 days from the member's effective date of retirement or if the early-retired member is guaranteed
5 reemployment with the same employer, the member must be considered to have continued in the status
6 of an active member and not to have separated from service. Any retirement allowance payments
7 received by the member must be repaid to the system, together with interest, at the actuarially assumed
8 rate, and the retirement allowance must be terminated."

9
10 Section 23. Section 19-20-901, MCA, is amended to read:

11 "19-20-901. Eligibility for disability retirement -- determination by board. (1) Upon the application
12 of a member or of the member's employer for a disability retirement allowance, any member who has
13 or more years of creditable service and who has become disabled while being an active member may be
14 retired by the retirement board the month immediately following the month in which employment
15 terminated. In order for a member to be eligible for disability retirement, the retirement board or its
16 representative shall certify that the member is mentally or physically incapacitated for the further
17 performance of the member's duties, that the incapacity is likely to be permanent, and that the member
18 should be retired. The board's representative shall report to the board the representative's findings and
19 any action taken by the representative, and the action must be presented to the board for approval
20 by the board.

21 (2) In making a determination under subsection (1), the retirement board or its representative
22 may:

- 23 (a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;
24 (b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official
25 acts; and
26 (c) issue subpoenas to compel the attendance of witnesses and the production of books, papers,
27 correspondence, memorandums, and other records considered necessary as evidence in connection with
28 a claim for disability retirement. The subpoenas issued under this subsection (2)(c) are enforceable
29 provided in 2-4-104.

30 (3) The retirement board may secure and pay reasonable compensation for professional services

and advice that the board determines necessary to carry out the purposes of this part."

Section 24. Section 19-20-902, MCA, is amended to read:

"**19-20-902. Allowance for disability retirement.** (1) Upon retirement for disability, a member must receive a disability retirement allowance equal to the greater of:

(a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, including service transferred under 19-20-409, ~~and additional service purchased under 19-20-412;~~ or

(b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year."

NEW SECTION. Section 25. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(2)(d)(i)(A) or a lump sum must be paid if that is the only benefit due the beneficiary.

1 **NEW SECTION.** Section 26. Repealer. Sections 19-20-412, 19-20-704, 19-20-707, 19-20-708
2 and 19-20-709, MCA, are repealed.

3
4 **NEW SECTION.** Section 27. Codification instruction. (1) [Section 4] is intended to be codified
5 as an integral part of Title 19, chapter 20, part 2, and the provisions of Title 19, chapter 20, part 2, apply
6 to [section 4].

7 (2) [Sections 9 through 11] are intended to be codified as an integral part of Title 19, chapter 20,
8 part 4, and the provisions of Title 19, chapter 20, part 4, apply to [sections 9 through 11].

9 (3) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and
10 the provisions of Title 19, chapter 20, part 7, apply to [section 19].

11 (4) [Section 25] is intended to be codified as an integral part of Title 19, chapter 20, part 10, and
12 the provisions of Title 19, chapter 20, part 10, apply to [section 25].

13
14 **NEW SECTION.** Section 28. Saving clause. [This act] does not affect rights and duties that
15 matured, penalties that were incurred, or proceedings that were begun before July 1, 1999.

16
17 **NEW SECTION.** Section 29. Effective date -- contingent effective dates. (1) Except as provided
18 in subsections (2) and (3), [this act] is effective July 1, 1999.

19 (2) The provisions in [sections 4 and 19], providing for the creation and use of an excess benefit
20 arrangement, are effective on the date that the internal revenue service determines in a private letter
21 ruling that the creation and use of the excess benefit arrangement provided in those sections comply with
22 the requirements of the Internal Revenue Code regarding a qualified retirement plan.

23 (3) The provisions in [sections 9, 13, and 18], providing for the making of contributions required
24 to purchase service or for purposes of termination pay by employer pick up, are effective on the date that
25 the internal revenue service determines in a private letter ruling that the creation and use of the employer
26 pick up method of making contributions provided in those sections comply with the requirements of the
27 Internal Revenue Code regarding a qualified retirement plan.

28 - END -

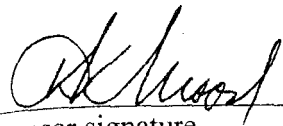
FISCAL NOTE

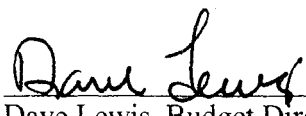
Bill #: HB0118

Title: Revise Teachers Retirement Laws

Primary Sponsor: Doug Mood

Status: As introduced

 1/8/98
Sponsor signature Date

 1-7-99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:	\$0	\$0
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. The Teachers' Retirement System is in the early phases of updating its data processing systems, which will include any compliance or housekeeping issues included in this legislation and the system will only need to make slight administrative changes as a result of the proposed legislation. There would be no fiscal impact.
2. The affect of Section 1 of the bill granting legislators the option of contributing on their regular salaries during the session is not possible to estimate. Given the few number of legislators who are also members of a public employee retirement system, it is not anticipated that the total obligations of the Legislative Council will increase or decrease significantly.

HB 118

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) State Administration -

04:05 PM

-
- HB 72** **SPONSOR:** Mercer, John **SHORT TITLE:** Guaranteed annual benefit adjustment for teachers' retirement system
 BY REQUEST OF: Teachers' Retirement Board
 REFERRED ON: 12/21/1998 **HEARD ON:** 01/29/1999
 EXECUTIVE ACTION: 02/11/1999 Bill Passed as Amended -- VOTE: 17 - 0
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- HB 78** **SPONSOR:** Brainard, Matt **SHORT TITLE:** Require negotiated settlement proceeds to be deposited in general fund
 REFERRED ON: 12/21/1998
 FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal
-
- HB 79** **SPONSOR:** Brainard, Matt **SHORT TITLE:** Establish a defined contribution plan within public employees' retirement system
 BY REQUEST OF: Committee On Public Employee Retirement Systems
 REFERRED ON: 12/21/1998 **HEARD ON:** 01/14/1999
 EXECUTIVE ACTION: 01/20/1999 Bill Passed as Amended -- VOTE: 12 - 5
 FINAL DISPOSITION 04/29/1999 Chapter Number Assigned
-
- HB 83** **SPONSOR:** Mood, Douglas **SHORT TITLE:** Extend sunset on Committee on Public Employee Retirement Systems
 BY REQUEST OF: Committee On Public Employee Retirement Systems
 REFERRED ON: 12/21/1998 **HEARD ON:** 01/12/1999
 EXECUTIVE ACTION: 01/21/1999 Bill Passed -- VOTE: 17 - 0
 FINAL DISPOSITION 03/26/1999 (H) Missed Deadline for Appropriation Bill Transmitt
-
- HB 117** **SPONSOR:** Ohs, Karl **SHORT TITLE:** Statutorily create consensus council
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/19/1999
 TABLED ON: 02/04/1999
 FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal
-
- HB 118** **SPONSOR:** Mood, Douglas **SHORT TITLE:** Revise teachers retirement system to comply with the internal revenue code
 BY REQUEST OF: Teachers' Retirement Board
 REFERRED ON: 01/04/1999 **HEARD ON:** 01/15/1999
 EXECUTIVE ACTION: 02/04/1999 Bill Passed as Amended -- VOTE: 17 - 0
 FINAL DISPOSITION 03/23/1999 Chapter Number Assigned
-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on January 15, 1999 at 9:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 118, HB 119: POSTED JAN. 13, 1999

Executive Action: NONE

HEARING ON HOUSE BILL 118

Opening Statement by Sponsor: REP. DOUG MOOD EXHIBIT(1)

EXHIBIT(2)EXHIBIT(3)

{Tape : 1; Side : A; Approx. Time Counter : 0.8 -30}

Informational Testimonial:

DAVE SENN, Executive Director of TRS-EXHIBIT(4)

Overview of Public Employee's Retirement Act. Went through exhibit 4 step by step, because essential in understanding why House Bill 118 be adopted.

{Tape : 1; Side : B; Approx. Time Counter : 4.3 - 16.8}

Proponent's Testimony:

TOM BILODEAU, Secretary of Montana Education Assoc. They've been discussing tax issues that affect bills for pension plans for several years. This legislation does it. {Tape : 1; Side : B; Approx. Time Counter : 17 - 18.8}

GLEN LEAVITT, Board of Regents Montana University System {Tape : 1; Side : B; Approx. Time Counter : 18.9 - 19}

Questions from Committee Members and Responses:

REP. GOALIE TO DAVID SENN: Why is there an age necessity requirement for disability eligibility? SENN: Must have five years of teaching time and experience, then it guarantees you 15% of your salary.

REP. WAGNER TO DAVID SENN:

REP. WALTER TO DAVID SENN: Referencing to the fiscal note; what about pop-up payments {80%-100%} if spouse dies? SENN: Have to have monies to pay the pop-up increase. {Tape : 1; Side : B; Approx. Time Counter : 19.4 - 26.1}

Closing by Sponsor: REP. DOUG MOOD

{Tape : 1; Side : B; Approx. Time Counter : 26.2 - 27.4}

HEARING ON HOUSE BILL 119

Opening Statement by Sponsor: REP. DOUG MOOD

{Tape : 2; Side : A; Approx. Time Counter : 0.2 -2.7}

HOUSE BILL 118

SECTION BY SECTION DESCRIPTION

Section 1 - 5-2-304 -- Continued participation in public retirement systems.

Section 5-2-304, grants a legislator, who is also a member of a public retirement system, the option to continue to participate as a member of the retirement system while they are serving in the legislature. The amendments would require the legislator to make an irrevocable election to continue to participate within 180 days of taking office (or until January 1, 2000, if currently serving in the legislature) and to continue their payments into the fund at the same rate of pay they would regularly receive as a member of the system. Legislators, who do not elect membership, will be allowed to purchase this service as provided in New Section 10.

Compliance with IRC §401(a) and federal limitations on service purchased. Also required for compliance with IRS prohibition against 401(k) programs for public employees.

Section 2 - 19-20-101 -- Definitions.

Add definitions for, Internal Revenue Code, Retired Member and Written Application. A few other definitions include minor clarification amendments.

Internal Revenue Code - complies with IRC §401(a)

Retired Member - necessary to comply with Treas. Reg. 1.401-1(a)(2)(i), prohibition against in-service distributions.

Written Application -- replaces terms such as: "application", "form" or "request"

Section 3 - 19-20-106 -- Retaining qualified plan status -- board rulemaking authority.

Amendments clarify the Board's authority to administer the plan in compliance with the Internal Revenue Code and to protect the plan's status as a governmental plan. Clarifies what constitutes the plan documents. [Useful in securing IRS determination letter on same.]

Compliance with IRC §401(a)

Section 4. -- New Section -- General Internal Revenue Service qualification rules.

Before a plan can be found to comply with the requirements of the Internal Revenue Code, the plan must include in its plan documents specific references to the qualification requirements applicable to a governmental plan. Some of the more general provisions are found in this new section. Others can be found throughout the teacher's retirement act. This section also provides for the Board to maintain an excess benefit arrangement under IRC §415(m) if any benefits guaranteed by the State cannot be allowed because they conflict with Section 415 of the Internal Revenue Code and establishes the limitation year for §415 testing purposes.

Incorporates the requirements of IRC §§401(a)(1), (2) and (8), §414(u), and §415(m).

Section 5 - 19-20-302 -- Active membership.

Requires substitute teachers to make a one-time irrevocable election to become a member and clarify that once they become a member they must remain a member until they terminate employment and withdraw their account. Substitute teachers who do not elect membership will be allowed to purchase this service as provided in New Section 11.

Amendments are necessary to comply with IRC 401(a).

Section 6 - 19-20-404 – Creditable service for active service in military, red cross, or merchant marine.

Section 19-20-412, MCA, is being repealed, therefore, the reference to 19-20-412 included in 19-20-404 must be deleted. Internal Revenue Code conforming amendment.

Section 7 - 19-20-405 – Limitation creditable service that may be awarded.

Section 19-20-412, MCA, is being repealed, therefore, the reference to 19-20-412 included in 19-20-405 must be deleted. Internal Revenue Code conforming amendment.

Section 8 - 19-20-414 – Rollover or transfer of public employee accumulated contributions.

Clarifies authority to make rollovers and transfers, and to receive rollovers in compliance with Section 401(a)(31) of the Internal Revenue Code.

Section 9 – New Section – Procedure for purchase of service credit and pick up.

Establishes procedures for the restoration and purchase of service in order to achieve compliance with revised Code Section 415.

This section spells out the requirements that employers and members must follow if they wish to take advantage of the option to purchase additional service with before tax dollars, what the IRS refers to as "Employer Pick-Up". Under the employer pickup provisions the IRS considers amounts deducted from the member's compensation to have been "picked-up and paid" to the TRS, by the employer. Several steps must be followed before this option will be available to members:

- The Montana Legislature must enact the provisions of this section.
- The IRS must issue a favorable ruling accepting the provisions of this section.
- Each employer must adopt a resolution making this option available to his or her employees.
- Each employee must execute an irrevocable election to have additional contributions deducted for the purpose of purchasing service.

Complies with IRC §414(h)(2)

Section 10 – New Section – Credit for legislative service required.

The section will grant members participating in the legislature who did not elect to continue to participate in the TRS, the option of purchasing their legislative service. The member will be required to contribute the contributions they would have made had they continued in the system, plus interest. The employer contributions plus interest will be paid by the legislative services division.

Section 11 – New Section – Credit for substitute teaching service required.

The section will grant members who were substitute teachers and did not elect to participate in the TRS, the option of purchasing their substitute teaching service. The member will be required to contribute both the employer and employee contributions that would have been made had they participated in the system, plus interest.

Section 12 - 19-20-502 – Restrictions on use of moneys.

Conforming language to clarify that the board and employees of the board may not engage in transaction prohibited by section 503(b) of the Internal Revenue Code. [Useful in securing IRS determination letter on same.]

Section 13 - 19-20-602 – Annuity savings fund – member's contributions.

This section is amended to expand the "pickup" of employee contributions to purchases of service and termination pay. See sections 9 and 18.

Section 14 - 19-20-603 – Withdrawal of accumulated contributions – options.

Clarify the applicability of IRC §401(a)(31), rollovers, to withdrawals and requires that a member file a written application before they can withdraw or qualify to roll over their account to another eligible retirement plan. Requires that the account of a nonvested member be refunded by the board if the account is less than \$200.00

Comply with §§401(a)(9) and (31)

Section 15 - 19-20-702 – Optional allowances.

Housekeeping amendments to clarify when and under what circumstances a retiree's benefit must convert to the normal form of retirement allowance following the death or divorce of the designated beneficiary. Providing consistent procedures for members whom retired before or after October 1, 1993. Facilitates compliance with Code Section 401(a)(9).

Section 16 - 19-20-703 – Payments to be monthly.

Amendments add provisions to facilitate compliance with section 401(a)(9) IRC, which requires that benefits begin no later than April 1 of the year following the calendar in which the member reaches age 70½ or terminates.

Section 17 - 19-20-710 – Maximum benefit limitation.

Restates existing prohibition against payment of benefits in excess of 415(b) limits, and authorizes payments from excess benefit arrangement under IRC §415(m) for any excess amounts. For a defined benefit plan, under Section 415(b) benefit accruals cannot exceed the maximum annual benefit provided to a member at Social Security retirement age of \$90,000, as adjusted for inflation, which for 1998, is \$130,000. This dollar limit may be reduced for early retirement.

Section 18 - 19-20-716 – Termination pay.

Members electing to use termination pay to increase their average final compensation and therefore, monthly benefits, are required to share with their employer the actuarial cost to fund the increased benefit. This employee cost will generally range between 75 to 80 percent of the termination pay the member receives. The proposed amendments would not change the members cost, but allow them to sign an irrevocable election form, at least 90 days prior to their date of termination, electing to have employee contributions "picked up" and paid by their employer. If approved by the IRS, the employee contributions deducted from the termination pay would then be "picked up" and paid by the employer, leaving the employee to pay taxes only on the balance. Amendments are subject to a favorable ruling from the IRS regarding pickup of employee contributions on termination pay and will not take effect unless a favorable ruling is received.

If an employee does not sign the irrevocable election form at least 90 days prior to their date of termination, they will still have the option to contribute on termination with after tax dollars subject to any IRS limits under section 415. Contributions "picked up" by the employer are not subject to the 415 limits on contributions.

Section 19 - New Section – Maximum contribution limitation.

New section necessary to comply with the limits established under sections 415(c) or 415(n) of the Internal Revenue Code. Authorizes the Board to apply the code sections to the member's best advantage, to refuse to accept contributions in excess of the 415 limits or redirect any excess contributions to a qualified excess benefit arrangement pursuant to section 415(m) of the IRC. Clarifies the definition of compensation for purposes of these limits.

Section 20 - 19-20-801 – Eligible for service retirement.

Conforming amendments. Strike language requiring the member's last 5 years of service be in Montana. It is not clear why a member would be required to work their last 5 years in Montana to be eligible for benefits and is probably an unconstitutional requirement. The language regarding the member's written application is redundant and unnecessary.

Section 21 - 19-20-802 – Early retirement.

Conforming amendments. Strike language requiring the member's last 5 years of service be in Montana. It is not clear why a member would be required to work their last 5 years in Montana to be eligible for benefits and is probably an unconstitutional requirement. The language regarding the member's written application is redundant and unnecessary.

Section 22 - 19-20-804 – Allowance for service retirement.

To facilitate compliance, requires termination of benefits upon reemployment and then reinstatement or recalculation of benefits. Clarifies that a retiree may return to any part-time position that would normally be covered under the TRS. Also, clarifying under what circumstances a retiree's benefit will cease if they exceed the established limits, and what happens when they subsequently retire following cancellation of retirement benefits.

Section 23 - 19-20-901 – Eligibility for disability retirement – determination by board.

Clarify the duties and responsibilities of the Board's representative when reviewing disability applications and requiring that any action taken by their representative be presented to the board for their approval.

Section 24 - 19-20-902 – Allowance for disability retirement.

Conforming amendment. Section 19-20-412, MCA, is being repealed, therefore, the reference to 19-20-412 included in 19-20-902 must be deleted.

Section 25 - New Section – Payment of death benefits.

Adds provisions to facilitate compliance with IRC §(401(a)(9), regarding payment of benefits following the death of a member.

Section 26 - New Section – Repealer.

19-20-412. One-for-Five Service is repealed to comply with IRC §415(n). Very few members have purchased this type of service since its inception in 1989 because of the very large cost members are required to pay. Members purchasing this type of service can almost always do better by purchasing a tax deferred annuity.

19-20-413. Purchase of Salary Credit. Conforming amendments to facilitate compliance with IRC §415(n).

Sections 19-20-704, 19-20-707, 19-20-708 and 19-20-709 all provided for some type of ad hoc cost of living adjustment and each should have been codified as a temporary part of the teachers' retirement act.

Section 27 - New Section – Codification Instructions.

Section 28 - New Section – Saving clause.

This section is necessary primarily to protect the rights of members who have or are in the process of purchasing one-for-five service.

Section 29 - New Section – Effective date – contingent effective dates.

This act is generally effective on July 1, 1999. However, sections requiring approval by the Internal Revenue Service, must be effective the latter of July 1, 1999, or the date approved by the IRS.

Amendments to House Bill No. 118
1st Reading Copy

For the House State Administration Committee

1. Page 1, title, line 18.
Following: "19-20-412,"
Insert: "19-20-413,"
2. Page 2, line 6.
Following: "the"
Insert: "teachers' or"
3. Page 3, line 22.
Following: ~~Earned~~
Strike: "Except as provided in"
Insert: "Unless included pursuant to"
4. Page 3, line 22.
Following: "include"
Strike: "lump" on line 22 through "employment" on line 25
Insert: "Termination Pay"
5. Page 3, following line 28.
Insert: "(e) "Earned compensation does not include compensation paid to a member through a plan for the deferral of compensation as determined under Internal Revenue Code Section 457(f)."
6. Page 5, line 2.
Following: "~~(20)~~"
Insert: "(a)"
7. Page 5, line 2.
Following: "of"
Strike: "termination" on line 2 through "payments" on line 3
Insert: " bona fide vacation leave, sick leave, severance pay, or amounts provided under window or early retirement incentive plans,"
8. Page 5, line 3
Following: "employment "
Strike: ";" on line 3 through "absence." on line 5
Insert: "and paid within two pay periods of termination."
 (b) Termination pay does not include:
 (i) any amounts that are not wages under Internal Revenue Code Section 3121, determined without regard to the wage base limitation; and

(ii) any amounts that are payable to a member through a plan for the deferral of compensation under Internal Revenue Code Section 457(f)."

9. Page 5, line 9.

Following: "board,"

Strike: "signed by the member,"

Insert: "properly executed"

10. Page 5, line 10.

Following: the first "board"

Insert: " ,"

11. Page 5, line 22.

Following: "document for"

Strike: "each"

Insert: "the"

12. Page 5, line 18.

Following: "414"

Strike: "(h)"

Insert: "(d)"

13. Page 11, line 11.

Following: "service"

Strike: "by"

Following: "member"

Insert: "is purchasing"

14. Page 16, line 18.

Following: "must"

Strike: "revert"

Insert: "convert"

Following: the second "the"

Strike: "full"

15. Page 16, line 22.

Following: "must"

Strike: "revert"

Insert: "convert"

Following: "the"

Strike: "full"

16. Page 19, line 12.

Following: "(3)"

Insert: "Pursuant to subsection 2, contributions required to be made by the member under subsections 1(a) or 1(b) must be:

(a) deducted from the portion of termination pay that:
(i) constitutes wages for purposes of Internal Revenue Code Section 3121, determined without regard to the wages base limitation, and;
(ii) is includible in the member's gross income for federal tax purposes.
(b) picked-up by the employer.
(4)"

17. Page 24, line 1.
Following: "19-20-412,"
Insert: "19-20-413,"

18. Page 24, line 20.
Following: "effective"
Insert: "the later of July 1, 1999, or"

19. Page 24, line 24.
Following: "effective"
Insert: "the later of July 1, 1999, or"

OVERVIEW OF KEY SECTIONS OF THE INTERNAL REVENUE CODE APPLICABLE TO PUBLIC PENSION PLANS

The following is a brief description of the Internal Revenue Code sections that are most likely to be found or referenced in Title 19, MCA, or in legislation introduced at the request of the Teachers' or Public Employees' Retirement Boards.

401(a) QUALIFICATION REQUIREMENTS

Section 401(a) constitutes certain requirements that a public plan must follow in order to remain a qualified plan.

The primary advantages in retaining "qualified" status under Code Section 401(a) are:

- Employer contributions are not taxable to members as they are made
- Earnings and income are not taxed to the trust or the members
- Certain favorable tax treatments may be available to members when they receive plan distributions, e.g., ability to rollover amounts

In order for most governmental plans to be qualified, they must meet the definition of a pension plan. A pension plan is defined as "a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement."

401(a)(1) FORMAL PLAN REQUIRED

A plan that allows contributions to a trust for the sole purpose of distributing accumulated contributions and income to employees and beneficiaries must be in writing.

401(a)(2) EXCLUSIVE BENEFIT TO EMPLOYEES

All plan assets must be held in trust and used exclusively for the benefit of employees or their beneficiaries.

401(a)(8) FORFEITURES MAY NOT INCREASE BENEFITS TO REMAINING MEMBERS

The Code requires that a defined benefit plan provide "that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan." Thus, if a member were to separate from service of the employer before becoming vested in the plan, any forfeited funds may not cause other members' benefits to increase. However, forfeitures may be used first to reduce administrative expenses and then to reduce employer contributions.

401(a)(9) LIMITS AND TIMELINES FOR DISTRIBUTIONS

- Code § 401(a)(9) requires that certain distribution rules be met in order for a plan to be qualified. The requirements under Code § 401(a)(9) include:
- Required distribution dates
- Required distribution periods
- Timing and amount of minimum distribution payments
- Incidental benefits requirements.

The plan must also state that any provisions in the plan contradictory to the distribution requirements must be overridden.

401(a)(17) MAXIMUM COMPENSATION

Annual compensation as of January 1998, which may be reported to the system for the purpose of computing benefits or employee contributions, must be limited to \$160,000. This amount is indexed for inflation.

401(a)(25) STATED ACTUARIAL ASSUMPTIONS

A defined benefit plan must specify actuarial assumptions in a manner that precludes employer or legislative discretion in order to provide definitely determinable benefits.

401(a)(31) ROLLOVER OF AN ELIGIBLE DISTRIBUTION TO ANOTHER QUALIFIED PLAN

Members applying to receive a lump-sum refund of their account must be permitted to have an eligible rollover distribution paid directly to an eligible retirement plan instead of receiving the distribution in cash. Such a rollover allows the member to maintain the tax-deferred status of the account.

402(g) ELECTIVE DEFERRALS THAT REDUCE COMPENSATION

Elective deferrals that reduce the members taxable income, but not the total compensation reported to a retirement plan, include:

- 125 Cafeteria Plans
- 403 (b) Tax Deferred Annuities
- 457 Deferred Compensation
- 414(h) Employer Pick-Up

414(d) DEFINITION OF A GOVERNMENTAL PLAN

The Code defines a governmental plan as one which is "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency of instrumentality of any of the foregoing." Note that whether the plan is maintained for its employees by the government entity may become a question if the plan covers non-governmental employees.

414(h)(2) EMPLOYER PICK-UP

In general, a contribution deducted from the member's compensation, although designated as an employee contribution, will be treated as an employer contribution. Employer contributions are not taxable income for the employee until distributed in the form of a retirement benefit. Consequently, if correctly picked up, an employee contribution will no longer be included in the employee's gross income, nor will it be subject to income tax withholdings.

414(u) QUALIFYING MILITARY SERVICE UPON RETURN FROM ACTIVE DUTY

The Uniformed Services Employment and Reemployed Rights Act OF 1994 (USERRA) requires employers to reemploy and preserve job security, pension and welfare benefits for "qualified" employees who engage in military service.

USERRA requires employers to make, on behalf of returning service members, any contributions to retirement plans that the employer would have made if the service member had not been absent as a result of military service.

A reemployed service member is also entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions to the extent the returning service member makes payment to the plan with respect to such contributions.

415 LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

Dollar and percentage of pay limits are specified.

415(b) LIMITATION ON BENEFITS

For a defined benefit plan, the total pension benefit each member accrues cannot exceed the maximum annual benefit, provided to a member at Social Security retirement age, of \$90,000 as adjusted for inflation, which for 1998, is \$130,000. The dollar limit may be reduced for early retirement.

415(c) LIMITATION ON CONTRIBUTIONS THAT CAN BE MADE TO THE PLAN

Generally, the annual amount that may be added to the member's account is limited to the lesser of \$30,000 or 25% of the member's compensation for the limitation year. Certain types of contributions are not treated as "annual additions." These include:

- Employer Pick-Up contributions
- Funds transferred from one qualified plan to another.
- Rollover contributions
- Repayment of amounts withdrawn

415(k)(3) ALLOWS MEMBERS TO RESTORE PREVIOUSLY WITHDRAWN SERVICE

Repayment of contributions (including interest) will not be taken into account for Code § 415 purposes if the repayment is to a governmental plan with respect to an amount previously refunded on a forfeiture of service credit under that plan or any other governmental plan.

415(m) QUALIFIED EXCESS BENEFIT ARRANGEMENT

Qualified Excess Benefits Arrangements (QEBA) are plans that provide benefits that cannot be provided under a qualified plan due to the Code § 415 limits on contributions and benefits.

415(n) PERMISSIVE SERVICE PURCHASES

Annual amounts contributed to purchase service credit meeting the Code requirements of "permissive service" must satisfy either, the § 415(c) dollar limit or the § 415(b) annual benefit accrual maximum. If the member satisfies either of the two limits, annual additions will not be reduced.

503(b) PROHIBITED TRANSACTIONS

The Code defines "prohibited transactions" to include the following:

- The plan lends any part of income or corpus, without the receipt of adequate security and reasonable rate of interest, to a disqualified person.
- The plan pays any compensation, in excess of reasonable allowance for salaries or other compensation for personal services actually rendered, to a disqualified person.
- The plan makes any part of its services available on a preferential basis to a disqualified person.
- The plan makes any substantial purchase of securities or other property, for more than adequate consideration in money or money's worth, from a disqualified person.
- The plan sells any substantial part of its securities or other property, for less than adequate consideration in money or money's worth, to a disqualified person.
- The plan engages in any other transaction which results in a substantial diversion of its income or corpus to a disqualified person.

The Code defines a disqualified person as the creator of the plan, a person who has made a substantial contribution to the plan, a member of the family of a person who is the creator or substantial contributor, or a corporation controlled by the creator or substantial contributor to the plan.

Treas. Reg. 1.401-1(a)(2)(i) GENERAL PROHIBITION AGAINST AN IN-SERVICE DISTRIBUTION

Members may not receive a monthly retirement benefit or withdraw contributions made by the employer, or earnings on such contributions, before normal retirement and termination of employment, or termination of the plan.



Committee on Public Employee Retirement Systems

55th Montana Legislature

EXHIBIT

HB

4
DATE Jan. 15 1999
118

Room 138 State Capitol
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

SENATE MEMBERS
SUE BARTLETT
CHAIRMAN
VIVIAN M. BROOKE
JOHN R. HERTEL
MIKE TAYLOR

HOUSE MEMBERS
MATT BRAINARD
VICE-CHAIRMAN
PATRICK G. GALVIN
DOUG MOOD
DIANA E. WYATT

COMMITTEE STAFF
SHERI HEFFELFINGER
RESEARCHER
DAVID NISS
STAFF ATTORNEY

REPORT ON HB 118

(Proposal # 8 - Teachers' Retirement Board-
general revision bill to comply with federal IRC regulations)

This report is required under Section 5-21-105, MCA. The Committee on Public Employee Retirement Systems (CPERS) must report its findings and recommendations on each public retirement-related proposal CPERS reviews prior to each legislative session. The findings and recommendations relate to the conceptual proposal as presented to CPERS prior to the final drafting and introduction of the bill.

Bill summary

House Bill No. 118 is by request of the Teachers' Retirement Board. The bill revises several statutes to ensure that the teachers' retirement system remains in compliance with federal Internal Revenue Codes (IRC) governing public pension plans. (CPERS relied on the Board's summary table identifying the changes made and did not examine the final bill draft.)

Issue background

Failure to comply with the IRC provisions applicable to public retirement systems can result in an IRS determination that the plan is not "qualified". A plan that is not "qualified" is subject to losing its federal tax-deferred status. Federal laws and regulations are regularly being revised and the Board obtains outside tax counsel to assist in regular reviews of system compliance. Federal qualification bills are not unusual and are necessary to ensure the systems remain qualified.

Committee findings

Public Policy Issues: The policy concern is that to keep the retirement systems qualified under IRC regulations, some changes may affect plan members' benefit options or how benefits are paid out. Thus, the TRS Board actively exercises its function in determining how best to implement necessary changes. The areas affected by this bill include:

- > clarifying the authority of the Board to comply with the IRC
- > membership rights for legislator who are members of TRS
- > service purchase provisions

- > termination pay
- > rollovers and transfers into the system
- > how certain benefits are paid out
- > maximum benefit and contribution limitations

Effect on other retirement systems: This bill covers TRS only.

Fiscal implications: Although some changes affect system fiscal procedures, no new revenue is required. The fiscal implications are internal.

Testimony to CPERS

Proponents: Teachers' Retirement Board

Opponents: None.

Committee recommendation and action

CPERS is required by statute to recommend that the legislature PASS or DO NOT PASS the proposal as presented to CPERS during the interim. CPERS may also recommend amendments. A CPERS report and recommendation is for informational purposes and does not bind the full legislature to any particular course of action.

CPERS voted 8 to 0 to recommend a DO PASS on HB 118

Date of CPERS action: October 29, 1998

Report prepared by: Sheri S. Heffelfinger
Research Analyst and staff to CPERS
Legislative Services Division
444-3596

HOUSE OF REPRESENTATIVE ROLL CALL

STATE ADMINISTRATION

COMMITTEE

DATE Jan. 15 1999

NAME	PRESENT	ABSENT	EXCUSED
Rep Allan Walters	/		
Rep Don Hedges	/		
Rep Frank Smith	/		
Rep Darrel Adams	/		
Rep Joan Andersen	/		
Rep Tom Dell	/		
Rep Bill Tash	/		
Rep Jeff Mangan	/		
Rep Doug Mood	/		
Rep Brennan Ryan	/		
Rep George Golie	/		
Rep Doug Wagner	/		
Rep Edith Clark	/		
Rep Monica Lindeen	/		
Rep Bill Thomas	/		
Rep Toni Hagener	/		
Rep Matt Brainard	/		
Sheri Heffelfinger	/		

MONTANA HOUSE OF REPRESENTATIVES VISITORS REGISTER

DATE Jan. 15 1999

BILL NO. 1184119

SPONSOR(S) Rep. Mood

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

☒ POI	David Senior	TPS	Teachers' Retirement
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on February 3, 1999 at 8:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Jeff Mangan (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s): HB 359, 362, Posted: 1/31/1999

Executive Action: HB 56, 274, 228, 118, 119,

Tabled bills: HB 144, 335

Vote: Motion carried unanimously 17-0.

EXECUTIVE ACTION ON HB 274

Motion: REP. WALTERS moved HB 274 DO PASS.

{Tape : 1; Side : B; Approx. Time Counter : 5.6 - 5.7}

Discussion:

{Tape : 1; Side : B; Approx. Time Counter : 6 - 9.8}

Vote: Motion carried unanimously 17-0.

{Tape : 1; Side : B; Approx. Time Counter : 9.8 - 10.3}

EXECUTIVE ACTION ON HB 228

Motion: REP. HEDGES moved HB 228 DO PASS

{Tape : 1; Side : B; Approx. Time Counter : 10.4 - 10.5}

Discussion:

{Tape : 1; Side : B; Approx. Time Counter : 10.6 - 12.9}

Motion: REP. BRAINARD moved HB 228 be amended.

{Tape : 1; Side : B; Approx. Time Counter : 13 - 20}

Motion/Vote: REP. WALTERS moved HB 228 DO PASS as amended.
16-1 with REP. WAGNER voting no.

EXECUTIVE ACTION ON HB 118

Motion: REP. MOOD moved DO PASS on HB 118.

{Tape : 1; Side : B; Approx. Time Counter : 21 -21.5}

Motion: REP. SMITH moved DO PASS on amendments.

{Tape : 1; Side : B; Approx. Time Counter : 21.5 - 21.6}

Discussion:

{Tape : 1; Side : B; Approx. Time Counter : 21.6 - 31}

Vote: The motion carried by unanimous vote to adopt the amendments.

{Tape : 1; Side : B; Approx. Time Counter : 31. - 32.}

Motion: REP. MOOD moved HB 118 DO PASS as amended

Vote: The motion carried unanimously.

HOUSE OF REPRESENTATIVE ROLL CALL

STATE ADMINISTRATION

COMMITTEE

DATE Feb 3 '99

NAME	PRESENT	ABSENT	EXCUSED
Rep Allan Walters	✓		
Rep Don Hedges	✓		
Rep Frank Smith	✓		
Rep Darrel Adams	✓		
Rep Joan Andersen	✓		
Rep Tom Dell	✓		
Rep Bill Tash	✓		
Rep Jeff Mangan	✓		
Rep Doug Mood	✓		
Rep Brennan Ryan	✓		
Rep George Golie	✓		
Rep Doug Wagner	✓		
Rep Edith Clark	✓		
Rep Monica Lindeen	✓		
Rep Bill Thomas	✓		
Rep Toni Hagener	✓		
Rep Matt Brainard	✓		
Sheri Heffelfinger	✓		

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on February 15, 1999 at 11:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 118, HB 119, 2/10/1999
Executive Action: HB 89, HB 118, HB 119, HB 198,
SB 400

HEARING ON HB 118

Sponsor: REP. DOUG MOOD, HD 58, SEELEY LAKE

Proponents: David Senn, Executive Director, Teachers' Retirement System

Opponents: None.

percent per year of service multiplied by that salary. They pay more than a 100% percent of the salary they lost as the actuarial cost. **SEN. HARGROVE** asked if a person who is a teacher and a legislator was paid for both during the legislature. **Mr. Senn** explained most school districts in the University do not pay teachers who are in the legislature during that legislative service time, but some may pay a partial payment during the legislative service time. **SEN. HARGROVE** asked what the contribution would be for a teacher in the legislature and where it comes from. **Mr. Senn** said under current law, the teacher has an option to contribute on the salary rate of a legislator or the daily salary of a teacher. The salary rate of a legislator is typically lower than that of a teacher. Therefore they typically opt to contribute on their legislative salary, except in the final 3 years when it matters in calculating the final average salary. This is a problem in complying with the IRS regulation of giving people options to select against the system. This bill says those currently in the legislature must make that election within 6 months after taking office or the effective date of this bill. They would contribute on their salary as a member of the Teachers' Retirement System.

SEN. TESTER asked **Mr. Senn** to clarify current portability of people coming in and out of the system and how this bill changes that. **Mr. Senn** said they currently accept contributions from another retirement plan and they do transfer contributions. This bill clarifies the statute the way the IRS would like to see it written. They are not stated specifically under the current law. **SEN. TESTER** asked if this is just a clarification of the law, but won't cause any change. **Mr. Senn** responded he was correct.

SEN. COLE said this bill clears up any contradictions between the IRS and the retirement. The other portion dealt with legislators who are involved with Teachers' Retirement. **Mr. Senn** said he was correct and it also relates to the Internal Revenue Code provision. **SEN. COLE** said the Fiscal Note states this would not have any effect. **Mr. Senn** stated he was correct.

Closing by Sponsor:

REP. MOOD closed.

HEARING ON HB 119

Sponsor: REP. DOUG MOOD, HD 58, SEELEY LAKE

Proponents: Mike O'Connor, Executive Director, Public
Employees Retirement System

Don Waldron, Montana Rural Education Association

Opponents: None.

Opening Statement by Sponsor:

REP. DOUG MOOD, HD 58, Seeley Lake, sponsored this bill on behalf of the Public Employee Retirement Board. He explained this bill is to ensure they remain qualified as a plan for the benefit of the members.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 41 - 49}

Mike O'Connor, Executive Director, Public Employees Retirement System, explained they hired an outside tax counsel to review all the statutes of the retirement systems to make sure they comply with IRS. This bill incorporates the changes needing to be addressed in the statutes **EXHIBIT(2)**. They are attempting to fine tune the retirement statutes to make sure they maintain qualified plan status. When they are done with this, they are going to submit their plan document and **HB 119** to the IRS for a private letter of ruling to make sure their plans meet the qualification requirements of the IRS. They are also trying to take advantage of the favorable tax treatments available through the IRS. Many of the sections are similar to **HB 118**.

The first 3 sections of the bill address the Social Security chapter. The Social Security Administration assessed a 39 million dollar bill. The Public Employees Retirement System gathered all the information from local government and got the 39 million down to 2.1 million. They collected contributions and interest from all state and local governments for the 2.1 million. They did have to pay the contributions for that time period, but they reduced the interest charge 70 percent. When they settle this, they will pay the Social Security contributions and 30 percent of the interest and refund 70 percent of the interest to state and local governments.

The first 3 sections say the administration of the Social Security part go to the Department of Administration for storage of the records. It will cost \$140 per year to store those records. The Public Employees Retirement System has paid the bill to settle this agreement, so they want to reimburse PERS for cost of the settlement.

{Tape : 1; Side : B; Approx. Time Counter : 49 - 69}

Section 6 deals with members receiving refunds and specifies when a refund can happen. The IRS allows public and private plans to refund contributions of \$200 or less without an application. Section 6 allows the refund if it is a dormant account. People who have balances of \$200 to \$5,000 can be refunded if they are non-vested. This gives them a pro-active approach so they do not increase the number of dormant accounts.

Title 19, Chapter 2, addresses all the retirement systems they administer. They have a separate chapter for each retirement system they administer for specific things pertaining only to individual retirements systems. Chapter 2 addresses all retirement systems and takes advantage of favorable tax treatments from the IRS. The employer pick up is found here. Members can purchase service with pre-tax money if they file an irrevocable election. They have people who purchase service years, therefore they do not want to eliminate it. They want their members to be able to purchase with pre-tax money in order to eliminate the 415 limits. They are cleaning up the other retirement statutes and putting all the information relating to service purchases in Chapter 2. They addressed the military service purchase. In order for retirement plans to comply with the IRS, they must comply with USERRA. There are some sections of military service that are more restrictive than Federal law allows. They are striking the restrictive sections and making sure each section addressing military services complies with Federal law.

Section 10 deals with the ability of members to roll over into the system and be able to purchase service. The IRS also sets limits on how much a retirement plan can pay out. Sections 12, 13, and 16 address what they can pay out and when they can pay out benefits. There are required distributions the IRS is looking for. The outside tax council had an issue with optional service. There are groups of people who have the option of joining PERS. The IRS has a problem giving a person the option of electing into PERS at any time during their career and it doesn't meet the qualification rules. They are going to allow people to opt into the system, but they must make an election within 6 months of their hire date. This does not prevent them from purchasing service at a later date.

Section 43 eliminates language allowing mental health corporations to join the system. Mental health corporations are non-governmental and the statute does not allow non-governmental agencies to be a member of the system. They currently have one mental health corporation. The members currently in the system will continue to be in the system, but any new hires would not be able to be members of the system. They are repealing the section

on public administrators, so public administrators are treated like any other government employee.

Don Waldron, Montana Rural Education Association, is in support of this bill. He said they will work to get the new information out to their employees.

Questions from Committee Members and Responses:

SEN. TESTER asked **Mr. O'Connor** if it is in the law that PERS can exempt other privatizations in government. **Mr. O'Connor** said several years ago there was a move to privatize county hospitals. Once they are privatized, the members who are employees of that hospital have an option to retire or roll over into another system. When this happens, they work with the individual agencies to inform people of their options and what is available to them. Once they are privatized, they are not able to be members of PERS. **SEN. TESTER** asked him to clarify the statute regarding mental health corporations. **Mr. O'Connor** said that the statute allowed them to be members of PERS and they are striking that statute. **SEN. TESTER** said this is specific to mental health corporations and asked if **Mr. O'Connor** has the ability to not allow people in government agencies that become privatized to be a part of PERS, as long as they are new hires and are not vested. **Mr. O'Connor** said that was correct.

SEN. HARGROVE asked what is a qualified plan and who determines whether it can be rolled over into PERS. **Mr. O'Connor** said the IRS determines what a qualified plan is and who can roll over into it. They have regulations saying any qualified plan can roll over into another qualified plan. **SEN. HARGROVE** asked if there was a definition of a qualified plan. **Mr. O'Connor** said they will be applying to the IRS for a letter of determination. If someone wanted to roll over into the system, they would ask for the qualification letter from IRS. **SEN. HARGROVE** asked what a public administrator is. **Mr. O'Connor** explained a public administrator is an individual who takes care of indigent people who have died, including their records, their burial, and locating their relatives.

SEN. COLE asked if taking retirement at 70 1/2 years of age is a federal law or a state law. **Mr. O'Connor** stated it was a federal rule and added it applies to government and private plans.

Closing by Sponsor:

REP. MOOD closed.

{Tape : 1; Side : B; Approx. Time Counter : 69 - 81}

EXECUTIVE ACTION ON HB 118

Motion/Vote: SEN. WELLS moved that HB 118 BE CONCURRED IN.
Motion carried 5-0.

EXECUTIVE ACTION ON HB 119

Motion/Vote: SEN. TESTER moved that HB 119 BE CONCURRED IN.
Motion carried 5-0.

EXECUTIVE ACTION ON SB 400

Motion/Vote: SEN. WELLS moved that SB 400 BE REMOVED FROM THE
TABLE. Motion carried 4-1 with SEN. WILSON voting no.

Motion: SEN. WELLS moved that SB 400 DO PASS.

SEN. WELLS explained he would like to discuss it on the Floor of
the Senate. He understands the objections from the school
boards. However, he thinks there are a lot of advantages to this
change.

SEN. HARGROVE stated he would vote to have it passed, but would
like for someone to bring up the concerns about the school
busses.

Vote: Motion carried 4-1 with SEN. WILSON voting no.

EXECUTIVE ACTION ON HB 198

Motion/Vote: SEN. WELLS moved that HB 198 BE CONCURRED IN.
Motion carried 5-0.

EXECUTIVE ACTION ON HB 89

Motion/Vote: SEN. TESTER moved that HB 89 BE CONCURRED IN.
Motion carried 5-0.

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

STATE ADMINISTRATION

COMMITTEE

DATE Feb BILL NO. 118 NUMBER

MOTION: Do Pass as amended - Unanimous

NAME	AYE	NO
Rep Allan Walters		
Rep Don Hedges		
Rep Frank Smith		
Rep Darrel Adams		
Rep Joan Andersen		
Rep Tom Dell		
Rep Bill Tash		
Rep Jeff Mangan		
Rep Doug Mood		
Rep Brennan Ryan		
Rep George Golie		
Rep Doug Wagner		
Rep Edith Clark		
Rep Monica Lindeen		
Rep Bill Thomas		
Rep Toni Hagener		
Rep Matt Brainard		
Sheri Heffelfinger		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

STATE ADMINISTRATION

COMMITTEE

DATE

Feb. 3

BILL NO.

118

NUMBER

MOTION:

Do Pass as amended - Vote on motion

NAME	AYE	NO
Rep Allan Walters		
Rep Don Hedges		
Rep Frank Smith		
Rep Darrel Adams		
Rep Joan Andersen		
Rep Tom Dell		
Rep Bill Tash		
Rep Jeff Mangan		
Rep Doug Mood		
Rep Brennan Ryan		
Rep George Golie		
Rep Doug Wagner		
Rep Edith Clark		
Rep Monica Lindeen		
Rep Bill Thomas		
Rep Toni Hagener		
Rep Matt Brainard		
Sheri Heffelfinger		

**FEDERAL COMPLIANCE/HOUSEKEEPING
TEACHERS' RETIREMENT SYSTEM****Presented by David L. Senn, Executive Director**

This legislation is introduced on behalf of the Teachers' Retirement Board. A little over a year ago, the board contracted with the law firm of Ice, Miller, Donadio & Ryan to review the Montana Teachers' Retirement System statutes for compliance with the qualification requirements of the Internal Revenue Code, as applicable to governmental pension plans. The purpose of the review was twofold. First, to verify that the plan met the requirements of the Internal Revenue Service to be considered a qualified plan and to recommend any amendments necessary to ensure the system remains a qualified plan. Secondly, to file with the Internal Revenue Service a request for a "Determination Letter" certifying that the plan meets the IRS qualification requirements.

In most instances, the system's status was found to be excellent. However, there are a few areas that need to be "fine tuned" -- in some cases due to recent federal law changes, some due to newer Internal Revenue Service interpretations, and in other cases due to questions and concerns that arose in the due diligence sessions with the TRS staff. House Bill 118 embodies the recommendations made by Counsel to maintain the qualified status of the plan and to take advantage of any benefit enhancements available under the Code.

The proposed amendments, together with the current laws and regulations, were submitted to the Internal Revenue Service with a request for a "Determination Letter" on April 27, 1998. On December 10, 1998, the Service responded with a favorable determination letter verify that the Montana Teachers' Retirement System satisfies the Internal Revenue Code requirements to be a qualified plan. We must now proceed with HB 118 to ensure that the system remains a qualified plan.

The primary advantages in retaining "qualified" status under Code Section 401(a) are:

- Employer contributions are not taxable to members as they are made
- Earnings and income are not taxed to the trust or the members
- Certain favorable tax treatments may be available to members when they receive plan distributions, e.g., ability to rollover amounts

In order for most governmental plans to remain "qualified", they must meet the definition of a pension plan. A pension plan is defined as "a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement." The assets of a qualified pension plan must be held in trust for the exclusive benefit of employees or their beneficiaries. Several of the amendments found in HB118 embody this general requirement to be a qualified plan.

This proposal has also been reviewed by the Interim Legislative Committee on Public Employee Retirement Systems and received their unanimous endorsement for enactment by the 1999 legislature. This legislation is necessary to maintain the qualified status of the Teachers' Retirement System and I urge your support.

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OVERVIEW OF KEY SECTIONS OF THE INTERNAL REVENUE CODE APPLICABLE TO PUBLIC PENSION PLANS

The following is a brief description of the Internal Revenue Code sections that are most likely to be found or referenced in Title 19, MCA, or in legislation introduced at the request of the Teachers' or Public Employees' Retirement Boards.

401(a) QUALIFICATION REQUIREMENTS

Section 401(a) constitutes certain requirements that a public plan must follow in order to remain a qualified plan.

The primary advantages in retaining "qualified" status under Code Section 401(a) are:

- Employer contributions are not taxable to members as they are made
- Earnings and income are not taxed to the trust or the members
- Certain favorable tax treatments may be available to members when they receive plan distributions, e.g., ability to rollover amounts

In order for most governmental plans to be qualified, they must meet the definition of a pension plan. A pension plan is defined as "a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement."

401(a)(1) FORMAL PLAN REQUIRED

A plan that allows contributions to a trust for the sole purpose of distributing accumulated contributions and income to employees and beneficiaries must be in writing.

401(a)(2) EXCLUSIVE BENEFIT TO EMPLOYEES

All plan assets must be held in trust and used exclusively for the benefit of employees or their beneficiaries.

401(a)(8) FORFEITURES MAY NOT INCREASE BENEFITS TO REMAINING MEMBERS

The Code requires that a defined benefit plan provide "that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan." Thus, if a member were to separate from service of the employer before becoming vested in the plan, any forfeited funds may not cause other members' benefits to increase. However, forfeitures may be used first to reduce administrative expenses and then to reduce employer contributions.

401(a)(9) LIMITS AND TIMELINES FOR DISTRIBUTIONS

- Code § 401(a)(9) requires that certain distribution rules be met in order for a plan to be qualified. The requirements under Code § 401(a)(9) include:
- Required distribution dates
- Required distribution periods
- Timing and amount of minimum distribution payments
- Incidental benefits requirements.

The plan must also state that any provisions in the plan contradictory to the distribution requirements must be overridden.

401(a)(17) MAXIMUM COMPENSATION

Annual compensation as of January 1998, which may be reported to the system for the purpose of computing benefits or employee contributions, must be limited to \$160,000. This amount is indexed for inflation.

401(a)(25) STATED ACTUARIAL ASSUMPTIONS

A defined benefit plan must specify actuarial assumptions in a manner that precludes employer or legislative discretion in order to provide definitely determinable benefits.

401(a)(31) ROLLOVER OF AN ELIGIBLE DISTRIBUTION TO ANOTHER QUALIFIED PLAN

Members applying to receive a lump-sum refund of their account must be permitted to have an eligible rollover distribution paid directly to an eligible retirement plan instead of receiving the distribution in cash. Such a rollover allows the member to maintain the tax-deferred status of the account.

402(g) ELECTIVE DEFERRALS THAT REDUCE COMPENSATION

Elective deferrals that reduce the members taxable income, but not the total compensation reported to a retirement plan, include:

- 125 Cafeteria Plans
- 403 (b) Tax Deferred Annuities
- 457 Deferred Compensation
- 414(h) Employer Pick-Up

414(d) DEFINITION OF A GOVERNMENTAL PLAN

The Code defines a governmental plan as one which is "established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." Note that whether the plan is maintained for its employees by the government entity may become a question if the plan covers non-governmental employees.

414(h)(2) EMPLOYER PICK-UP

In general, a contribution deducted from the member's compensation, although designated as an employee contribution, will be treated as an employer contribution. Employer contributions are not taxable income for the employee until distributed in the form of a retirement benefit. Consequently, if correctly picked up, an employee contribution will no longer be included in the employee's gross income, nor will it be subject to income tax withholdings.

414(u) QUALIFYING MILITARY SERVICE UPON RETURN FROM ACTIVE DUTY

The Uniformed Services Employment and Reemployed Rights Act OF 1994 (USERRA) requires employers to reemploy and preserve job security, pension and welfare benefits for "qualified" employees who engage in military service.

USERRA requires employers to make, on behalf of returning service members, any contributions to retirement plans that the employer would have made if the service member had not been absent as a result of military service.

A reemployed service member is also entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions to the extent the returning service member makes payment to the plan with respect to such contributions.

415 LIMITATIONS ON CONTRIBUTIONS AND BENEFITS

Dollar and percentage of pay limits are specified.

415(b) LIMITATION ON BENEFITS

For a defined benefit plan, the total pension benefit each member accrues cannot exceed the maximum annual benefit, provided to a member at Social Security retirement age, of \$90,000 as adjusted for inflation, which for 1998, is \$130,000. The dollar limit may be reduced for early retirement.

415(c) LIMITATION ON CONTRIBUTIONS THAT CAN BE MADE TO THE PLAN

Generally, the annual amount that may be added to the member's account is limited to the lesser of \$30,000 or 25% of the member's compensation for the limitation year. Certain types of contributions are not treated as "annual additions." These include:

- Employer Pick-Up contributions
- Funds transferred from one qualified plan to another.
- Rollover contributions
- Repayment of amounts withdrawn

415(m) QUALIFIED EXCESS BENEFIT ARRANGEMENT

Qualified Excess Benefits Arrangements (QEBA) are plans that provide benefits that cannot be provided under a qualified plan due to the Code § 415 limits on contributions and benefits.

415(n) PERMISSIVE SERVICE PURCHASES

Annual amounts contributed to purchase service credit meeting the Code requirements of "permissive service" must satisfy either, the § 415(c) dollar limit or the § 415(b) annual benefit accrual maximum. If the member satisfies either of the two limits, annual additions will not be reduced.

415(k)(3) ALLOWS MEMBERS TO RESTORE PREVIOUSLY WITHDRAWN SERVICE

Repayment of contributions (including interest) will not be taken into account for Code § 415 purposes if the repayment is to a governmental plan with respect to an amount previously refunded on a forfeiture of service credit under that plan or any other governmental plan.

503(b) PROHIBITED TRANSACTIONS

The Code defines "prohibited transactions" to include the following:

- The plan lends any part of income or corpus, without the receipt of adequate security and reasonable rate of interest, to a disqualified person.
- The plan pays any compensation, in excess of reasonable allowance for salaries or other compensation for personal services actually rendered, to a disqualified person.
- The plan makes any part of its services available on a preferential basis to a disqualified person.
- The plan makes any substantial purchase of securities or other property, for more than adequate consideration in money or money's worth, from a disqualified person.
- The plan sells any substantial part of its securities or other property, for less than adequate consideration in money or money's worth, to a disqualified person.
- The plan engages in any other transaction which results in a substantial diversion of its income or corpus to a disqualified person.

The Code defines a disqualified person as the creator of the plan, a person who has made a substantial contribution to the plan, a member of the family of a person who is the creator or substantial contributor, or a corporation controlled by the creator or substantial contributor to the plan.

Treas. Reg. 1.401-1(a)(2)(i) GENERAL PROHIBITION AGAINST AN IN-SERVICE DISTRIBUTION

Members may not receive a monthly retirement benefit or withdraw contributions made by the employer, or earnings on such contributions, before normal retirement and termination of employment, or termination of the plan.

HOUSE BILL 118

SECTION BY SECTION DESCRIPTION

Section 1 - 5-2-304 -- Continued participation in public retirement systems.

Section 5-2-304, grants a legislator, who is also a member of a public retirement system, the option to continue to participate as a member of the retirement system while they are serving in the legislature. The amendments will require the legislator to make an irrevocable election to continue to participate within 180 days of taking office (or until January 1, 2000, if currently serving in the legislature) and to continue their payments into the fund at the same rate of pay they would regularly receive as a member of the system. Legislators, who do not elect membership, will be allowed to purchase this service as provided in New Section 10.

Compliance with IRC §401(a) and federal limitations on service purchased. Also required for compliance with IRS prohibition against 401(k) programs for public employees.

Section 2 - 19-20-101 -- Definitions.

Add definitions for, Internal Revenue Code, Retired Member and Written Application. A few other definitions include minor clarification amendments.

Internal Revenue Code - complies with IRC §401(a)

Retired Member - necessary to comply with Treas. Reg. 1.401-1(a)(2)(i), prohibition against in-service distributions.

Written Application -- replaces terms such as: "application", "form" or "request"

Section 3 - 19-20-106 -- Retaining qualified plan status -- board rulemaking authority.

Amendments clarify the Board's authority to administer the plan in compliance with the Internal Revenue Code and to protect the plan's status as a governmental plan. Clarifies what constitutes the plan documents. [Useful in securing IRS determination letter on same.]

Compliance with IRC §401(a)

Section 4. -- New Section -- General Internal Revenue Service qualification rules.

Before a plan can be found to comply with the requirements of the Internal Revenue Code, the plan must include in its plan documents specific references to the qualification requirements applicable to a governmental plan. Some of the more general provisions are found in this new section. Others can be found throughout the teacher's retirement act. This section also provides for the Board to maintain an excess benefit arrangement under IRC §415(m) if any benefits guaranteed by the State cannot be allowed because they conflict with Section 415 of the Internal Revenue Code and establishes the limitation year for §415 testing purposes.

Incorporates the requirements of IRC §§401(a)(1), (2) and (8), §414(u), and §415(m).

Section 5 - 19-20-302 -- Active membership.

Requires substitute teachers to make a one-time irrevocable election to become a member and clarifies that once they become a member they must remain a member until they terminate employment and withdraw their account. Substitute teachers who do not elect membership will be allowed to purchase this service as provided in New Section 11.

Amendments are necessary to comply with IRC 401(a).

Section 6 - 19-20-404 – Creditable service for active service in military, red cross, or merchant marine.

Section 19-20-412, MCA, is being repealed, therefore, the reference to 19-20-412 included in 19-20-404 must be deleted. Internal Revenue Code conforming amendment.

Section 7 - 19-20-405 – Limitation creditable service that may be awarded.

Section 19-20-412, MCA, is being repealed, therefore, the reference to 19-20-412 included in 19-20-405 must be deleted. Internal Revenue Code conforming amendment.

Section 8 - 19-20-414 – Rollover or transfer of public employee accumulated contributions.

Clarifies authority to make rollovers and transfers, and to receive rollovers in compliance with Section 401(a)(31) of the Internal Revenue Code.

Section 9 – New Section – Procedure for purchase of service credit and pick up.

Establishes procedures for the restoration and purchase of service in order to achieve compliance with revised Code Section 415.

This section spells out the requirements that employers and members must follow if they wish to take advantage of the option to purchase additional service with before tax dollars, what the IRS refers to as "Employer Pick-Up". Under the employer pickup provisions the IRS considers amounts deducted from the member's compensation to have been "picked-up and paid" to the TRS, by the employer. Several steps must be followed before this option will be available to members:

- The Montana Legislature must enact the provisions of this section.
- The IRS must issue a favorable ruling accepting the provisions of this section.
- Each employer must adopt a resolution making this option available to his or her employees.
- Each employee must execute an irrevocable election to have additional contributions deducted for the purpose of purchasing service.

Complies with IRC §414(h)(2)

Section 10 – New Section – Credit for legislative service required.

The section will grant members participating in the legislature who did not elect to continue to participate in the TRS, the option of purchasing their legislative service. The member will be required to contribute the contributions they would have made had they continued in the system, plus interest. The employer contributions plus interest will be paid by the legislative services division.

Section 11 – New Section – Credit for substitute teaching service required.

The section will grant members who were substitute teachers and did not elect to participate in the TRS, the option of purchasing their substitute teaching service. The member will be required to contribute both the employer and employee contributions that would have been made had they participated in the system, plus interest.

Section 12 - 19-20-502 – Restrictions on use of moneys.

Conforming language to clarify that the board and employees of the board may not engage in transaction prohibited by section 503(b) of the Internal Revenue Code. [Useful in securing IRS determination letter on same.]

Section 13 - 19-20-602 – Annuity savings fund – member's contributions.

This section is amended to expand the "employer pickup" of employee contributions to purchases of service and termination pay. See sections 9 and 18.

Section 14 - 19-20-603 – Withdrawal of accumulated contributions – options.

Clarify the applicability of IRC §401(a)(31), rollovers, to withdrawals and requires that a member file a written application before they can withdraw or qualify to roll over their account to another eligible retirement plan. Requires that the account of a nonvested member be refunded by the board if the account is less than \$200.00

Comply with §§401(a)(9) and (31)

Section 15 - 19-20-702 – Optional allowances.

Housekeeping amendments to clarify when and under what circumstances a retiree's benefit must convert to the normal form of retirement allowance following the death or divorce of the designated beneficiary. Providing consistent procedures for members whom retired before or after October 1, 1993. Facilitates compliance with Code Section 401(a)(9).

Section 16 - 19-20-703 – Payments to be monthly.

Amendments add provisions to facilitate compliance with section 401(a)(9) IRC, which requires that benefits begin no later than April 1 of the year following the calendar in which the member reaches age 70½ or terminates.

Section 17 - 19-20-710 – Maximum benefit limitation.

Restates existing prohibition against payment of benefits in excess of 415 limits, and authorizes payments from excess benefit arrangement under IRC §415(m) for any excess amounts. For a defined benefit plan, under Section 415(b) benefit accruals cannot exceed the maximum annual benefit provided to a member at Social Security retirement age of \$90,000, as adjusted for inflation, which for 1998, is \$130,000. This dollar limit may be reduced for early retirement.

Section 18 - 19-20-716 – Termination pay.

Members electing to use termination pay to increase their average final compensation and therefore, monthly benefits, are required to share with their employer the actuarial cost to fund the increased benefit. This employee cost will generally range between 75 to 80 percent of the termination pay the member receives. The proposed amendments would not change the members cost, but allow them to sign an irrevocable election form, at least 90 days prior to their date of termination, electing to have employee contributions "picked up" and paid by their employer. If approved by the IRS, the employee contributions deducted from the termination pay would then be "picked up" and paid by the employer, leaving the employee to pay taxes only on the balance. Amendments are subject to a favorable ruling from the IRS regarding pickup of employee contributions on termination pay and will not take effect unless a favorable ruling is received.

If an employee does not sign the irrevocable election form at least 90 days prior to their date of termination, they will still have the option to contribute on termination with after tax dollars subject to any IRS limits under section 415. Contributions "picked up" by the employer are not subject to the 415 limits on contributions.

Section 19 - New Section – Maximum contribution limitation.

New section necessary to comply with the limits established under sections 415(c) or 415(n) of the Internal Revenue Code. Authorizes the Board to apply the code sections to the member's best advantage, to refuse to accept contributions in excess of the 415 limits or redirect any excess contributions to a qualified excess benefit arrangement pursuant to section 415(m) of the IRC. Clarifies the definition of compensation for purposes of these limits.

Section 20 - 19-20-801 – Eligible for service retirement.

Conforming amendments. Strike language requiring the member's last 5 years of service be in Montana. It is not clear why a member would be required to work their last 5 years in Montana to be eligible for benefits and is probably an unconstitutional requirement. The language regarding the member's written application is redundant and unnecessary.

Section 21 - 19-20-802 – Early retirement.

Conforming amendments. Strike language requiring the member's last 5 years of service be in Montana. It is not clear why a member would be required to work their last 5 years in Montana to be eligible for benefits and is probably an unconstitutional requirement. The language regarding the member's written application is redundant and unnecessary.

Section 22 - 19-20-804 – Allowance for service retirement.

To facilitate compliance, requires termination of benefits upon reemployment and then reinstatement or recalculation of benefits. Clarifies that a retiree may return to any part-time position that would normally be covered under the TRS. Also, clarifying under what circumstances a retiree's benefit will cease if they exceed the established limits, and what happens when they subsequently retire following cancellation of retirement benefits.

Section 23 - 19-20-901 – Eligibility for disability retirement – determination by board.

Clarify the duties and responsibilities of the Board's representative when reviewing disability applications and requiring that any action taken by their representative be presented to the board for their approval.

Section 24 - 19-20-902 – Allowance for disability retirement.

Conforming amendment. Section 19-20-412, MCA, is being repealed, therefore, the reference to 19-20-412 included in 19-20-902 must be deleted.

Section 25 - New Section – Payment of death benefits.

Adds provisions to facilitate compliance with IRC §(401)(a)(9), regarding payment of benefits following the death of a member.

Section 26 - New Section – Repealer.

19-20-412. One-for-Five Service is repealed to comply with IRC §415(n). Very few members have purchased this type of service since its inception in 1989 because of the very large cost members are required to pay. Members purchasing this type of service can almost always do better by purchasing a tax deferred annuity.

19-20-413. Purchase of Salary Credit. Conforming amendments to facilitate compliance with IRC §415(n).

Sections 19-20-704, 19-20-707, 19-20-708 and 19-20-709 all provided for some type of ad hoc cost of living adjustment and each should have been codified as a temporary part of the teachers' retirement act.

Section 27 - New Section – Codification instructions.

Section 28 - New Section – Saving clause.

This section is necessary primarily to protect the rights of members who have or are in the process of purchasing one-for-five service.

Section 29 - New Section – Effective date – contingent effective dates.

This act is generally effective on July 1, 1999. However, sections requiring approval by the Internal Revenue Service, must be effective the latter of July 1, 1999, or the date approved by the IRS.

DATE Feb. 15, 1999

[illegible]



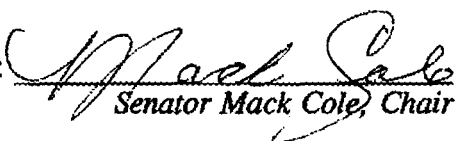
SENATE STANDING COMMITTEE REPORT

February 16, 1999

Page 1 of 1

Mr. President:

We, your committee on State Administration report that House Bill 118 (third reading copy - blue) be concurred in.

Signed: 
Senator Mack Cole, Chair

To be carried by Senator Sue Bartlett

- END -

DATE February 15, 1999

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: ~~HB~~ 118, ~~HB~~ 119

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Mike O'Connor	444-3154	PERS	119	X	
Eric Feou	442-4350	MRA/MFT	118/119	X	
Don Waldron	443-2629	MRA -	118/119	✓	
David Senn	444-3376	TRS	HB 118	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY



AN ACT REVISING STATUTES GOVERNING THE TEACHERS' RETIREMENT SYSTEM TO COMPLY WITH THE REQUIREMENTS OF THE INTERNAL REVENUE CODE FOR A QUALIFIED GOVERNMENTAL RETIREMENT PLAN; CLARIFYING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO COMPLY WITH THE INTERNAL REVENUE CODE; CLARIFYING THE MEMBERSHIP RIGHTS OF LEGISLATORS WHO ARE ALSO MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; GRANTING EMPLOYERS PARTICIPATING IN THE TEACHERS' RETIREMENT SYSTEM THE OPTION OF WITHHOLDING EMPLOYEE CONTRIBUTIONS UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE FOR THE PURPOSE OF PURCHASING SERVICE; PERMITTING CONTRIBUTIONS WITHHELD ON TERMINATION PAY AND REPORTED TO THE TEACHERS' RETIREMENT SYSTEM TO BE WITHHELD UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE; CLARIFYING ELIGIBILITY PROVISIONS; CLARIFYING DUTIES OF THE TEACHERS' RETIREMENT BOARD REPRESENTATIVE; AMENDING SECTIONS 5-2-304, 19-20-101, 19-20-106, 19-20-302, 19-20-404, 19-20-405, 19-20-414, 19-20-502, 19-20-602, 19-20-603, 19-20-702, 19-20-703, 19-20-710, 19-20-716, 19-20-801, 19-20-802, 19-20-804, 19-20-901, AND 19-20-902, MCA; REPEALING SECTIONS 19-20-412, 19-20-413, 19-20-704, 19-20-707, 19-20-708, AND 19-20-709, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 5-2-304, MCA, is amended to read:

"5-2-304. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who

is ~~otherwise eligible to participate as a member or contributor~~ of a public retirement system governed by state law may but is not required to continue ~~his the person's~~ participation in ~~such that~~ public retirement system while engaged in his official duties as a legislator. A legislator shall make an irrevocable election within 180 days of taking office whether to continue participation in the public retirement system. A person who is a member of the Montana legislature on July 1, 1999, has until January 1, 2000, to file a written application with the teachers' or public employees' retirement board that is the irrevocable election required by this section.

(3) A legislator who elects to continue participation as provided in subsection (2) shall:

~~(a) continue his the payments into the fund of the retirement system at the rate currently in effect in such the system based on his the legislator's monthly salary as a member of that system; or~~
~~(b) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a legislator.~~

(4) The state contribution ~~shall~~ must be made by legislative appropriation. It ~~shall~~ must equal the appropriate employer contribution at the rate currently in effect in the system."

Section 2. Section 19-20-101, MCA, is amended to read:

"19-20-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602 ~~or 19-20-413~~. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and

have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under ~~19-20-716(2)~~ 19-20-716(1)(b).

(4) "Beneficiary" means a person formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for professional membership dues; maintenance; housing; day care; ~~or~~ automobile, travel, lodging, or entertaining expenses; or any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) ~~Earned~~ Unless included pursuant to 19-20-716, earned compensation does not include ~~lump-sum payments in respect to unused, accumulated sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive or severance payment contingent upon the employee terminating employment~~ termination pay.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999.

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(10)~~(11) "Part-time service" means service that is less than full-time or that totals less than 9 months in a normal academic year. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

~~(11)~~(12) "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

~~(12)~~(13) "Regular interest" means interest at 4% a year compounded annually or at a rate as may be set by the retirement board in accordance with 19-20-501(2).

(14) "Retired member" means a person who has terminated employment that is eligible for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(13)~~(15) "Retirement allowance" means a payment due monthly to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

~~(14)~~(16) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(15)~~(17) "Retirement system" or, "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(16)~~(18) "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(17)~~(19) "Termination" or "terminate" means that the member has severed the employment relationship with the member's employer and that all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(18)~~(20) (a) "Termination pay" means any form of ~~termination pay made at the time of retirement or death; bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other~~ payments contingent on the employee terminating employment; ~~any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.~~

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

~~(19)~~(21) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(22) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board that contains all the information required by the board, including documentation as the board considers necessary."

Section 3. Section 19-20-106, MCA, is amended to read:

"19-20-106. Retaining qualified plan status -- board rulemaking authority. (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as specified in the Internal Revenue Code. If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public

retirement systems or with the plan's status as a qualified governmental plan under section 414(d) of the Internal Revenue Code and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform to the federal qualification requirements and allow the ~~system~~ plan to retain tax-deferred status. The board may adopt rules to implement this section.

(2) For the purpose of section 401(a) of the Internal Revenue Code, the plan document for the retirement plan is composed of the applicable provisions of the Montana constitution, this chapter, and applicable rules adopted by the board."

Section 4. General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. The board shall adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement. The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement. The benefit arrangement must be a separate part of the system. The benefit

arrangement is subject to the following requirements:

(a) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(b) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30.

Section 5. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech-language pathologist, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

(f) any person who has elected not to become a member of the retirement system, who has been

continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher:

(i) ~~may elect~~ shall make an irrevocable election whether to become an active member of the retirement system on the first day of employment ~~in any fiscal year~~; or

(ii) is required to become an active member of the retirement system on the 31st day of employment in any fiscal year if the substitute teacher has not elected membership under subsection (4)(a)(i).

(b) A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall make an irrevocable election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.

(c) The employer shall give written notification to a substitute teacher on the first day of employment ~~in any fiscal year~~ of the option to elect membership under subsection (4)(a)(i).

(d) If a substitute teacher declines to elect membership during the election period, the teacher shall execute a written statement waiving membership and the employer shall retain the statement.

~~(5) A substitute teacher who did not elect membership under subsection (4)(a)(i) and who subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:~~

~~(a) an amount equal to the combined employee and employer contributions that would have been~~

~~made if the substitute teacher had elected membership, plus~~

~~(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.~~

~~(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike."~~

Section 6. Section 19-20-404, MCA, is amended to read:

"19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1)

A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean conflict between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed written application form and proper certification of the member's military service.

(2) ~~{a}~~ If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection ~~{a}~~ for creditable service in the retirement system; ~~except as provided in subsection (2)(b),~~ for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

~~(b) If a member elects to purchase additional service under 19-20-412, service purchased under~~

~~this subsection (2) may be used only for the purpose of calculating the member's retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-20-801 or 19-20-802.~~

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 7. Section 19-20-405, MCA, is amended to read:

"19-20-405. Limit on creditable service that may be awarded. The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, and 19-20-410(1), ~~and 19-20-412~~ may not exceed 5 years."

Section 8. Section 19-20-414, MCA, is amended to read:

"19-20-414. Rollover or transfer of public employee accumulated contributions. (1) A member who is eligible to qualify service under this chapter may at any time before retirement apply to roll over or transfer the member's accumulated contributions on deposit with any other qualified eligible retirement plan. The total amount transferred to the retirement system may not exceed the amount due to purchase service.

(2) If, in the case of a transfer, the transferred ~~the~~ account includes both tax-deferred and taxed contributions amounts, the transferring agency shall identify the member's tax-deferred and taxed ~~contribution and interest balances~~ amounts at the time the transfer is made.

(3) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by subsection (1), the board shall accept a direct rollover of eligible distributions from another eligible retirement plan."

Section 9. Procedure for purchase of service credit and pick up. (1) A member who wishes to redeposit pursuant to 19-20-602(2) amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a

combination of lump-sum payments and installment payments.

(b) If a series of installment payments are elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall elect the irrevocable payroll deduction authorization provided in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable payroll deduction authorization.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable payroll deduction authorization. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pick up is the later of:

(i) the adoption of the employer's resolution; or

(ii) the execution of the irrevocable payroll deduction authorization form.

(b) The pick up does not apply to a contribution made before the effective date of the employer's resolution. An irrevocable payroll deduction authorization in effect on the effective date of the employer's resolution is void and the provisions of subsection (1) apply.

(4) If the irrevocable payroll deduction authorization is elected by the member, it must be executed by the member and the member's employer. Subject to any maximum amounts or duration established by state or federal law, the irrevocable payroll deduction authorization must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the irrevocable payroll deduction authorization is 3 months, and the maximum duration is 5 years. The minimum number of years specified to be purchased may not be less than 1 year or the total number of years that the member is eligible to purchase. The maximum may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable payroll deduction authorization may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may make more than one binding, irrevocable payroll deduction authorization so long as a subsequent deduction authorization does not amend a previous binding, irrevocable payroll deduction authorization. A member may not prepay any amounts under a binding, irrevocable payroll deduction authorization.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable payroll deduction authorization expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

Section 10. Credit for legislative service required. (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes:

(a) an amount equal to the member contributions that would have been made if the legislator had elected membership; and

(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the

contributions would have earned if they had been on deposit with the retirement system.

Section 11. Credit for substitute teaching service required. A substitute teacher who did not elect membership under 19-20-302 and who subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:

- (1) an amount equal to the combined member and employer contributions that would have been made if the substitute teacher had elected membership; and
- (2) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

Section 12. Section 19-20-502, MCA, is amended to read:

"19-20-502. Restrictions on use of ~~moneys~~ money. (1) ~~No A~~ member of the retirement board ~~or any of its employees or an employee of the board~~ may not:

(a) have an interest, direct or indirect, in the gains or profits of any investment of ~~moneys~~ money of the retirement system, except as ~~herein~~ provided in this section;

(b) directly or indirectly, for ~~himself~~ the member or employee or as an agent, in any manner use the ~~moneys~~ money or deposits of the retirement system except to make ~~such~~ current and necessary expenditures ~~as are~~ authorized by the retirement board; or

(c) become an endorser or surety or in any manner an obligor for ~~moneys~~ money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code."

Section 13. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings fund -- member's contribution. (1) The annuity savings fund is a fund in which the contributions for the members to provide for their retirement allowance or benefits must

be accumulated in individual accounts for each member. The normal contribution of each member is 7.044% of the member's earned compensation. Contributions to and payments from the annuity savings fund must be made in the following manner:

~~(1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall:~~

(i) shall pick up and pay the contributions that would be payable by the member under this section subsection (1) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to [section 9].

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(2) In addition to the normal contributions, ~~and~~ subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the

contributions would have earned had the contributions not been withdrawn. The redeposit must be made in accordance with [section 9].

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund."

Section 14. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal of accumulated contributions -- options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings fund in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

~~(3) A person whose membership terminates under the provisions of 19-20-304(4) may withdraw the person's accumulated contributions.~~

~~(4)~~ Upon written ~~request~~ application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for making the written ~~request~~ application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified

beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 15. Section 19-20-702, MCA, is amended to read:

"19-20-702. Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A--the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C--the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(d) Period certain and life--a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.

(i) The member shall elect one of the following certain time periods:

(A) 10 years if the member is 75 years of age or younger at the time of retirement; or

(B) 20 years if the member is 65 years of age or younger at the time of retirement.

(ii) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(3) (a) Upon written ~~request~~ application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert the member's optional retirement allowance to a ~~regular retirement or disability allowance~~ normal form of retirement allowance if:

(i) ~~the original beneficiary has died; or. The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.~~

(ii) ~~the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.~~

(b) Upon receipt of the ~~request~~ written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(4) ~~Effective on the first of the month following the death of a person nominated as the designated beneficiary under subsection (2)(a), (2)(b), or (2)(c), any A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, will revert may file a written application to revert the optional retirement allowance to the full normal form of retirement allowance available at the time of retirement if:~~

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month

following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(5) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(6) The retired member ~~may, within 18 months of the death of the designated beneficiary, shall~~ file ~~a~~ the written application required by subsection (3) or (4) with the board to designate a different beneficiary ~~and or~~ to select an actuarially equivalent optional allowance, or both, within 18 months of the death or divorce of the designated beneficiary. The optional allowance is effective on the first day of the month following receipt of the retiree's application."

Section 16. Section 19-20-703, MCA, is amended to read:

"19-20-703. Payments to be monthly. (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence."

Section 17. Section 19-20-710, MCA, is amended to read:

"19-20-710. Maximum benefit limitation. No A monthly benefit paid under the retirement system

provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code ~~of 1986 and adjusted annually by the commissioner of internal revenue~~ for calendar years 1988 and thereafter. However, benefits in excess of those limits may be paid from an excess benefit arrangement subject to [section 19]."

Section 18. Section 19-20-716, MCA, is amended to read:

"19-20-716. Termination pay. (1) If a member terminates and receives termination pay at the time of termination and elects to retire at that the time of retirement, the member shall select, subject to subsection (4) and by executing a binding, irrevocable written election at least 90 days before the member's termination date, one of the following options:

(1)(a) Option 1--The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(2)(b) Option 2--The member may use a yearly amount of the total termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). The contributions must be made at the time of termination.

(3)(c) Option 3--The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer, ~~and any contributions made under 19-20-602 and 19-20-605 must be refunded.~~

(2) A binding, irrevocable election required by this section must be executed by both the member and the employer and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked

up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pick up is the date of execution of the binding, irrevocable election by both the member and employer. The pick up does not apply to a contribution made before the effective date of the pick up.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer.

(4) If a member fails to make the written election within the time period required in subsection (1) or if the member contribution is greater than the total amount of termination pay, the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) all or any part of the termination pay received. A contribution made pursuant to this subsection cannot be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 19. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system if the amount of the contribution would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) If the system's law requires a lump-sum payment for purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of sections 125, 403(b), or 457 of the Internal Revenue Code.

Section 20. Section 19-20-801, MCA, is amended to read:

"19-20-801. Eligibility for service retirement. A member who has at least 5 full years of creditable service, ~~whose last 5 years of creditable service were in this state,~~ and who has attained the age of 60 or has been credited with full-time or part-time creditable service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application ~~setting forth the fact of the member's retirement.~~"

Section 21. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) A member who is not eligible for service retirement but who has at least 5 years of creditable service, ~~whose last 5 years of creditable service were in this state,~~ and who has attained the age of 50 may retire from service and be eligible for an early retirement allowance if ~~he~~ the member files with the retirement board ~~his~~ the member's written application ~~setting forth the fact of his retirement.~~

(2) The early retirement allowance ~~shall~~ must be determined as prescribed in 19-20-804(1) and

section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by $1/2$ of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which ~~he~~ the member would have retired had ~~he~~ the member attained 60 years of age or had ~~he~~ the member completed 25 years of creditable service; and

(b) by $3/10$ of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which ~~he~~ the member would have retired had ~~he~~ the member attained 60 years of age or had ~~he~~ the member completed 25 years of creditable service."

Section 22. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. (1) Upon termination, an eligible member must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service; and service transferred under 19-20-409, ~~and additional service purchased under 19-20-412.~~

(2) Except as provided in subsection ~~(3)~~ (4), a retired member may be employed ~~as a part-time or substitute teacher in Montana~~ part-time in a position specified in 19-20-302 and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) (a) Except as provided in subsection (4), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning the month in which the retired member returns to full-time employment or earns more than allowed.

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning the later of either the month following termination or July 1 of the school year following the date on which the

retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (3)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(4) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."

Section 23. Section 19-20-901, MCA, is amended to read:

"19-20-901. Eligibility for disability retirement -- determination by board. (1) Upon the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated. In order for a member to be eligible for disability retirement, the retirement board or its representative shall certify that the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired. The board's representative shall report to the board the representative's findings and any action taken by the representative, and the action must be presented to the board for approval by the board.

(2) In making a determination under subsection (1), the retirement board or its representative may:

- (a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;
- (b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official

acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (2)(c) are enforceable as provided in 2-4-104.

(3) The retirement board may secure and pay reasonable compensation for professional services and advice that the board determines necessary to carry out the purposes of this part."

Section 24. Section 19-20-902, MCA, is amended to read:

"19-20-902. Allowance for disability retirement. (1) Upon retirement for disability, a member must receive a disability retirement allowance equal to the greater of:

(a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, including service transferred under 19-20-409, ~~and additional service purchased under 19-20-412;~~ or

(b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year."

Section 25. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant

to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(2)(d)(i)(A) or a lump sum must be paid if that is the only benefit due the beneficiary.

Section 26. Repealer. Sections 19-20-412, 19-20-413, 19-20-704, 19-20-707, 19-20-708, and 19-20-709, MCA, are repealed.

Section 27. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 19, chapter 20, part 2, and the provisions of Title 19, chapter 20, part 2, apply to [section 4].

(2) [Sections 9 through 11] are intended to be codified as an integral part of Title 19, chapter 20, part 4, and the provisions of Title 19, chapter 20, part 4, apply to [sections 9 through 11].

(3) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 19].

(4) [Section 25] is intended to be codified as an integral part of Title 19, chapter 20, part 10, and the provisions of Title 19, chapter 20, part 10, apply to [section 25].

Section 28. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1999.

Section 29. Effective date -- contingent effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) The provisions in [sections 4 and 19], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.

(3) The provisions in [sections 9, 13, and 18], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.

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